93-713

CASE NO. _____

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

GARY G. GRAHAM,
Petitioner,

versus

THE FLORIDA SUPREME COURT, and THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE FLORIDA SUPREME COURT

APPENDIX
VOLUME ONE

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DOCUMENT 1

Opinion of the Florida Supreme Court
In Re Judge Graham

SUPREME COURT OF FLORIDA

No. 80,273

INQUIRY CONCERNING A JUDGE, NO. 91,415

RE: GARY G. GRAHAM

{June 24, 1993}

CORRECTED COPY

PER CURIAM.

We have for review the Judicial Qualifications Commission's (JQC) finding that Judge Gary Graham demonstrates a present unfitness to hold office and its recommendation that he be removed from office. We have jurisdiction pursuant to article V, section 12 of the Florida Constitution. We approve the JQC's findings and recommendations and remove Graham from the office of county judge.

Graham was elected as the county court judge for Citrus County in 1986 and has served in that position since taking office in 1987. On August 7, 1992, the JQC formally charged Graham

with the following violations of canons 1, 2, and 3 (A) (1) of the Code of Judicial Conduct:

- PAGE 2 -

1. Repeatedly using his position as judge of the Citrus County Court to make allegations of official misconduct and improper criticisms against fellow judges, elected officials and their assistants, and others, without reasonable factual basis or due regard for their personal and professional reputations.

2. Exceeding and abusing the power of his office by imposing improper sentences and improper use of contempt power.

3. Acting in an undignified and discourteous manner toward litigants, attorneys, and others appearing in his court.

4. Acting in a manner which impugned the public perception of the integrity and impartiality of the judiciary.

5. Closing and attempting to close public proceedings.

The JQC made numerous factual findings to support its conclusion that Graham's cumulative conduct is unbecoming a member of the judiciary and demonstrates a present unfitness to hold office. Although the JQC's report fully explains the nature of each particular incident involving Graham's misconduct, we mention

only a few of the factual findings that typify his behavior and tend to erode the public's confidence in the judiciary.

Graham presided in a case in which the defendant was charged with being a passenger in a vehicle in possession of an open container of alcohol. Graham suspended his driver's license for six months. When the defendant questioned the fairness of the sentence, Graham increased the suspension to nine months and then asked if the defendant wanted the court to reconsider the sentence. When the defendant responded "yes sir," Graham

increased the suspension to one year. We agree with the JQC that Graham's arbitrary increase in sentencing in this instance constituted an improper abuse of power.

Graham also served as the presiding judge in a case in which he sentenced the defendant to six months in jail for spray painting vulgar graffiti on public property. In open court, the mother of the defendant questioned the fairness of the sentence. Graham addressed the mother, stating, "You know what his problem is, his problem is you. It is not me. It is you. I can tell by the way you are defending him." Graham then engaged courtroom personnel

and spectators in a highly inappropriate colloquy that would be embarrassing to any reasonable person, particularly the defendant's mother. He needlessly utilized vulgar and offensive language and, in doing so, demonstrated a severe lack of judicial temperament.

In another case in which Graham presided, the defendant was convicted of driving under the influence of alcohol. When Graham sentenced the defendant, he also took that opportunity to accuse the sheriff's office of improperly releasing the defendant on his own recognizance as an act of favoritism. Graham stated that a ten-day sentence would have been appropriate but for the defendant's "improper" release on his own recognizance. As punishment for the "improper release," Graham then sentenced the defendant to ninety days in the county jail. He refused to mitigate the defendant's sentence and told the defendant "That's what you get for trading favors to get out of the Citrus County

jail." Although the defendant's sentence was within the legal range, Graham's comments clearly indicated that the length of the sentence was not based on the severity of the offense or on the defendant's criminal record, but on Graham's own allegations of

political favoritism in the sheriff's office. His actions constituted an abuse of power and impugned the public's perception of the integrity and impartiality of the judiciary.

To impose any degree of discipline upon a judge, the evidence regarding the charges against him or her must be clear and convincing. In re LaMotte, 341 So. 2d 513 (Fla. 1977). Although the findings of the JQC are of "persuasive force," In re Kelly, 238 So. 2d 565, 571 (Fla. 1970), cert. denied, 401 U.S. 962, 91 S. Ct. 970, 28 L. Ed. 2d 246 (1971), this Court is charged with rendering the ultimate decision on whether the evidence proves that Graham's conduct is unbecoming a member of the judiciary. The object of these disciplinary proceedings "is not to inflict punishment, but to determine whether one who exercises judicial power is unfit to hold a judgeship." Id. at 569. Regrettably, in his appearance before the JQC, in his brief, and in his oral argument to this Court, Graham only obliquely addressed the critical issue of his present fitness to serve as a judge. Instead, he focuses his arguments on the conduct of other officials, attorneys, and citizens of Citrus County. Regardless of whether his criticisms of these individuals and institutions are well-founded, they are not relevant

to our determination of his ability to administer justice fairly and professionally.

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As a county judge, Graham made what he perceived to be a valiant effort at ridding Citrus County of the political favoritism and government corruption that caused the demise of his predecessor. His zealous pursuit of a pure society apparently clouded his ability to impartially adjudicate the matters before him. His motives are acceptable, but his methods are not. Unfortunately, Graham fails to recognize that the alleged misconduct of others does not justify his repeated departure from the guidelines established in the Code of Judicial Conduct. "A judge's power to make orders exists solely by virtue of his or her function as an adjudicator; it does not extend beyond the performance of judicial duties." In re Eastmoore, 504 So. 2d 756, 757 (Fla. 1987). To go beyond those duties, as Graham has done, amounts to an abuse of power that threatens the integrity of the judicial branch.

We recognize that Graham is not dishonest, venal, or guilty of moral turpitude. According to the constitution, though, "[m]alfides, scienter or moral turpitude on the part of justice or

judge shall not be required for removal from office of a justice or judge whose conduct demonstrates a present unfitness to hold office." Art. V, § 12(f), Fla. Const. Judges are not obligated to adhere to a uniform mode of behavior and they are free to make decisions without fearing an investigation by the JQC. In re a Judge, 357 So. 2d 172 (Fla. 1978). "Every judicial officer is granted broad discretionary officer is granted broad discretionary powers, and one of the great strengths of our system is the carefully guarded right to

exercise independently those powers." Id at 178. But when diverting from common professional standards and judicial courtesies, a judge's conduct should be rationally based. The direct evidence in this case reveals that Graham's conduct was, at times, neither professional nor rational, and there was a clear abuse of judicial power to the detriment of individuals.

Graham argues that his right to due process was violated because he was given insufficient time to prepare his defense and because the JQC sat as both the prosecutor and the judge.[1] Procedural due process requires that a "judge be given an oppor-

tunity to be heard, and that the proceedings against a judge be essentially fair." In re Shenberg, 17 Fla. L. Weekly 5217, 5216 (Fla. April 2, 1992). Graham received notice of the investigation and was formally charged on August 7, 1992. The JQC hearing was held in January 1993, giving Graham approximately five and one-half months to prepare for the charges.

We reject Graham's contention that his right to due process was violated by the JQC's dual performance as fact-finder and judge. As the reviewing court, we are obligated to study the record and independently assess the factual findings and recommendation of the JQC. We conclude that the fact finding

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[1]We find it ironic that Graham now complains about the disciplinary process and the role of the JQC. Graham instigated the JQC to initiate disciplinary proceedings against Judge Leonard Damron. See In re Damron, 487 So. 2d 1 (Fla. 1986)

process was conducted according to the procedural rules of the JQC; that the JQC granted Graham an opportunity to be heard; and that the proceedings were essentially fair and afforded Graham his right to due process.[2]

Having approved the JQC's findings of fact, this Court is faced with the choice of publicly reprimanding Graham or remov-

ing him from the office of county judge. Art. V, § 12, Fla. Const. This Court will not lightly remove someone from judicial office. In re Berkowitz, 522 So. 2d 843 (Fla. 1988). A judge who refuses to recognize his own transgressions does not deserve the authority or command the respect necessary to judge the transgressions of others. We are troubled by the fact that Graham shows no remorse and we can only presume that if this Court reprimanded him, he would continue to violate the precepts of the Code of Judicial Conduct. See In re Trettis, 577 So. 2d 1312 (Fla. 1991) (when a judge continuously acts in a manner that undermines public confidence, removal may be required).

Graham has provided a number of letters from citizens who support his efforts as a county judge and we realize that he has been popularly elected and reelected to his position. However,

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[2]Our review of the transcripts and video tapes of the JQC hearing revealed that Graham repeatedly objected to motions, intentionally delayed the proceedings, and disregarded the instructions of the presiding chair. Although his performance during the JQC proceedings does not condemn him, it does reflect negatively upon his character. We are convinced that Graham would not have tolerated such behavior in his own courtroom.

"if a judge commits a grievous wrong which should erode confidence in the judiciary, but it does not appear that the public has lost confidence in the judiciary, the judge should nevertheless be removed." LaMotte, 341 So. 2d at 518. Because judges are held to a very high standard of conduct, In re Boyd, 308 So. 2d 13 (Fla. 1973), they are frequently required to make some sacrifices that other individuals are not called to make. By accepting the privilege of serving as a judge and by taking the oath of office, Graham agreed to live and operate his courtroom by that high standard.

Standing alone, each individual charge against Graham might not warrant the extreme disciplinary measure of removal.

> Conduct unbecoming a member of the judiciary may be proved by evidence of specific major incidents which indicate such conduct, or it may also be proved by evidence of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary.

Kelly, 238 So. 2d at 566. Although some of the charges are more severe than others, Graham's cumulative conduct over a period of time and the totality of the circumstances compel us to consider extreme remedial action. "Pec(c)adillos of a judge should be ignored by the Commission unless they cumulatively reflect upon

the present quality of his judicial service or render him an object of disrespect and derision in his role to the point of ineffectiveness." State ex rel. Turner v. Earle, 295 So. 2d 609, 621 (Fla. 1974) (Ervin, J., dissenting). A judgeship is a

position of trust, not a fiefdom. Litigants and attorneys should not be made to feel that the disparity of power between themselves and the judge jeopardizes their right to justice. In removing Graham from office, we rely on In re Crowell, 379 So. 2d 107 (Fla. 1980). In Crowell, this Court removed the judge for abuse of contempt power and a pattern of hostile conduct that demonstrated a serious lack of judicial temperament.[3] Graham's conduct was similar in degree to Judge Crowell's and warrants the same discipline.

We approve the findings and recommendation of the JQC. Gary Graham is hereby removed from office without compensation effective upon the filing of this opinion, at which time a vacancy will exist in the Citrus County court.

It is so ordered.

BARKETT, c.J., and OVERTON, SHAW, GRIMES, KOGAN and HARDING, JJ., concur.
McDonald, J., concurs in part and dissents in part with an opinion.

[3]In In Re Crowell, 379 So. 2d 107 (Fla. 1980), the judge who was the subject of the disciplinary proceedings partially attributed his misconduct to medical problems. Graham offers no similar justification or mitigating reasons that might explain his actions. Graham's case is distinguishable from In re Lantz, 402 So. 2d 1144 (Fla. 1981), in which Judge Lantz was publicly reprimanded. Although Judge Lantz was charged with repeated acts of arrogance and displaying a lack of courtesy and dignity to litigants and lawyers, he confessed his misdeeds, apologized, and was rehabilitated.

MC DONALD, J., concurring in part, dissenting in part.

I agree that there is competent evidence to support the findings of fact of the commission. I further agree that Judge Graham's actions as found support the conclusion that on occasions he failed to conduct himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary as required by canon 1, Code of Judicial Conduct. He was not always courteous to people with whom he dealt in his official capacity as required by canon 3.

In assessing his fitness to hold office we should address the totality of his performance. None of his transgressions, standing alone, appear sufficient to make a determination that he is unfit. Collectively, he becomes suspect. Our evaluation, however, should not be limited to his ethical violations. Also thrown in the ratio

must be the hours and the days where he properly functioned. We must also consider his intellect, his honesty, and other personal traits. Numerous tapes, both audio and video, indicate that for the most part and on most occasions he performed adequately as a judge.

One of Judge Graham's shortcomings is his view that his conduct was justifiable and for good cause without consideration of its effect on others. He explains his actions as that of one trying to clean up a decadent county court system. He fails to recognize that even though one's goal may be appropriate, the means employed to accomplish it must be within the canons of judicial ethics. I believe that some of his actions can be explained by judicial immaturity.

His conduct throughout the proceedings before the Judicial Qualifications Commission was deplorable. He feels that the entire proceedings against him were an extension of his political enemies and that the members of the commission became unworthy participants therein. He presented large amounts of irrelevant evidence, constantly challenged the chairman of the commission,

made numerous unnecessary objections. It is unfortunate that he did not employ a skilled lawyer to advise and conduct the hearings for him, because the manner in which he participated in the proceedings could not have created a friendly feeling from members of the commission. See In re a Judge, 357 So.2d 172 (Fla.1978)

We do not lightly remove a judge from office. Most removals have been the result of some act of dishonesty by the judge. No one claims, or even suggests, that Judge Graham is dishonest. The record supports his claim that he in fact is genuinely honest.

We reprimanded Judge Dick Lantz in In re Lantz, 402 So. 2d 1144 (Fla. 1981), for conduct that appeared to me more egregious than that of Judge Graham. Judge Lantz acknowledged his transgressions while Judge Graham has not. We reprimanded Judge Richard Kelly for conduct which was quite similar to that of Judge Graham. In re Kelly, 238 So. 2d 565 (Fla. 1970), cert. denied, 401 U.S. 962, 91 S. Ct. 970, 28 L. Ed. 2d 246 (1971). We removed Judge Joseph M. Crowell for gross abuse of a judge's contempt power. In re Crowell, 379 So. 2d 107 (Fla. 1979).

Judge Crowell was also suffering from medical problems. Neither of these factors exist in Judge Graham's case.

I do not wish to minimize Judge Graham's transgressions, but I do not believe we can find that he is unfit to serve. Now that this Court has advised him of his errors, and with an appropriate reprimand delivered in open court by the Chief Justice, I believe he should be allowed to continue to serve for such time as he has been elected.

I would remind Judge Graham that judges are servants of the people in an unique way. We have huge power over the property and lives of many people. This power must be responsibly and reflectively utilized. All persons must be treated equally and impartially. A judge must not react in anger to any situation. At all times we must serve the public interest by promoting justice and avoid any impropriety or appearance thereof. Courtesy to all is an essential trait of a respected judge. We must not be swayed by partisan demands, public clamor, or considerations of personal popularity, nor apprehension of unjust criticism. A judge should be careful to assure that in every particular the judge's conduct

should be above reproach. He should not use his office for political power or retribution against his detractors.

I believe these proceedings were necessary. I also believe that they are bound to have a therapeutic affect on the future conduct of Judge Graham and, hopefully, help steer other judges from like conduct.

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Thus I would approve the factual findings of the commission and loudly and severely reprimand Judge Graham. I would not remove him from office.

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Original Proceeding - Judicial Qualifications Commission

Joseph J. Reiter, Chairman, Ford Thompson, General Counsel and Roy T. Rhodes, Special General Counsel, Florida Judicial Qualifications Commission, Tallahassee, Florida; and Terrance A. Bostic, and Alicia J. Schumacher of Bush, Ross Gardner, Warren & Rudy, P.A., Special Counsel to the Florida Judicial Qualifications Commission, Tampa, Florida.

for Petitioner

Gary G. Graham, *pro se*, Inverness, Florida,

for Respondent

DOCUMENT 2

Findings of Fact, Conclusions of Law and Recommendations for Removal

BEFORE THE FLORIDA JUDICIAL
QUALIFICATIONS COMMISSION

CASE NO. 80,273

INQUIRY CONCERNING

A JUDGE, NO. 91-415

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATION FOR REMOVAL

The Florida Judicial Qualifications Commission ("the Commission"), pursuant to Article V, Section 12 of the Florida Constitution, Rule 21 of the Florida Judicial Qualifications Commission Rules and Rule 2.140 of the Rules of Judicial Administration, hereby files its Findings of Fact, Conclusions of Law and Recommendation for Removal with the Supreme Court of Florida regarding Judge Gary G. Graham, County Court Judge for Citrus County, Florida.

I. BACKGROUND

Respondent is the County Court Judge for Citrus County, Florida. He was first elected in 1986 and has continuously served since taking office in 1987.

On August 7, 1992, the Commission filed a Notice of Formal Charges against Respondent in accordance with Rule 7 of the Florida Judicial Qualifications Commission Rules. The Notice charged Respondent with six violations of the Code of Judicial Conduct and contained thirty-one separate factual allegations supporting the

violations. On October 24, 1992, the Commission filed an Amendment to the Notice of Formal Charges against Respondent which contained fourteen additional factual allegations in support of several of the six violations contained in the Notice of Formal charges.

The Notice and its Amendment charged Respondent with the following six violations of the Code of Judicial Conduct:

1. Repeatedly using his position as Judge of the Citrus County Court to make allegations of official misconduct and improper criticisms against fellow judges, other elected officials and their assistants and others, without reasonable factual basis or due regard for their personal and professional reputations, in violation of Canons 1, 2 and 3A.1 of the Code of Judicial conduct;

2. Exceeding and abusing the power of his office by imposing improper sentences and improper use of contempt power, in violation of Canons 1, 2 and 3A.1 of the Code of Judicial Conduct;

3. Acting in an undignified and discourteous manner toward litigants, attorneys and others appearing in his court, in violation of Canons 1, 2 and 3A.3 of the Code of Judicial Conduct;

4. Acting in a manner which impugned the public perception of the integrity and impartiality of the judiciary, in violation of Canons 1, 2 and 3A.3 of the Code of Judicial Conduct;

5. Closing and attempting to close public proceedings, in violation of Canons 1 and 2 of the Code of Judicial Conduct; and,

6. Engaging in *ex parte* communications, in violation of Canons 1, 2 and 3A.4 of the Code of Judicial conduct.

The Commission denied Respondent's motions to dismiss and he

filed an Objection, Partial Answer and Demand for Jury Trial directed to the Notice of Formal Charges. Respondent did not address the specific allegations against him in his responsive pleading; he simply denied each of the allegations. Respondent raised a variety of affirmative defenses to the charges. He argued that the Commission had not followed its own rules, was biased and prejudiced against him and was an unconstitutional institution which violated his rights to procedural due process. He also argued that the charges were trivial, the Code of Judicial Conduct was unconstitutionally vague and therefore unenforceable and that his criticisms and allegations of misconduct against others were

protected as free speech by the United States and Florida Constitutions.[1]

On October 21, 1992, the Commission noticed the hearing for January 26, 1993.[2]

The notice of Formal Charges and the Amendment

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[1]Respondent subsequently filed a virtually identical pleading directed to both the Notice and its Amendment. This subsequent pleading also contained a counterclaim against the Commissioners related to an alleged conspiracy by the Commissioners and others to violate certain statutory and constitutional rights of the Respondent. The Commission struck the counterclaim upon motion of Special Counsel.

[2]Respondent was admittedly notified of the investigation against him on April 28, 1992, and was advised of the majority of the specific allegations against him on June 28, 1992. (*See*, Amended Motion to Dismiss, p. 41-42.) Nonetheless, Respondent continuously sought to postpone the hearing, arguing that he could not be prepared, and delayed commencement of discovery until approximately one month before the hearing. Respondent filed numerous motions to continue the hearing based, in great part, on the same grounds raised in his pleadings and motions to dismiss. Respondent also filed a Petition for Constitutional Writs with this Court,seeking, *inter alia*, to vacate the notice of hearing. On January 25, 1993, the day before the hearing commenced, Respondent instituted an civil action against the Commissioners and the

to the Notice of Formal Charges were consolidated and the hearing commenced as noticed on January 26, 1993. Respondent was present and represented himself, with occasional assistance from attorney Joseph F. McDermott. The case against Respondent was presented by Special Counsel Terrance A. Bostic. The thirteen

members of the Commission were present as follows: Joseph J. Reiter, Esquire, Chairman; Circuit Court Judge Frank N. Kaney, Vice Chairman; District Court of Appeals Judge J. Klein Wigginton; District Court of Appeals Judge Natalie Baskin (sitting as an *ad hoc* replacement for recused Commissioner Judge Richard H. Frank); Circuit Court Judge Miette K. Burnstein; County Court Judge Marvin H. Gillman; County Court Judge David A. Demers (sitting as an *ad hoc* replacement for recused Commissioner Judge Thomas B. Freeman); Mrs. Sybil H. Barnes (sitting as an *ad hoc* replacement for recused Commissioner Garth C. Reeves); Mr. William C. Clark (sitting as an *ad hoc* replacement for recused Commissioner Seth Dennis); Mr. John D. Griner (appointed to temporarily fill the vacancy created by the expiration of the term of Commissioner Sybil H. Barnes Mr. Rutledge R. Liles, Esquire; Mrs. Nancy Mahon; and, Mr. Stanley G. Tate. All thirteen members of the Commission were present throughout the hearing and deliberations.

Special Counsel presented the evidence against Respondent between January 26-29, 1993. The evidence consisted of the testimony of seventeen witnesses and forty-three exhibits. The

Commission's Counsel in the United States District Court for the Middle District of Florida seeking to enjoin the hearing.

majority of the exhibits were official court files, including the audiotaped record of many of the proceedings at issue in the hearing.

On the third day of the hearing, the Commission granted Special Counsel's motion to dismiss sixteen of the factual allegations. Special Counsel rested his case at the end of the fourth day of the hearing and the Commission granted his motion to dismiss one additional factual allegation. Respondent then moved for a directed verdict on all of the remaining charges against him.

Following argument on Respondent's motion, the hearing was adjourned on the evening of January 29, 1993, and the Chairman announced that the hearing would recess until February 23, 1993. The Commission met in deliberative session on January 30, 1993, and dismissed two of the remaining twenty-eight factual allegations against Respondent and struck portions of a third allegation. Otherwise, Respondent's motion for directed verdict was denied.

The hearing recommenced before the Commission for its fifth hearing day on February 23, 1993, and continued through February 26, 1993. The hearing proceeded on the Amended Consolidated Notice of Formal Charges and Amendment to Notice of Formal Charges which had been filed by Special Counsel and reflected the Commission's rulings on Special Counsel's motions to dismiss and Respondent's motion for directed verdict. For two and one-half days, Respondent presented the testimony of 36 witnesses and introduced approximately 140 exhibits before resting his case. Special Counsel presented two witnesses in rebuttal and the evidentiary portion of

the hearing concluded at the close of the seventh hearing day. Final arguments were conducted the following day and the Commission deliberated until a decision was reached.

II. FINDINGS OF FACT

The Commission, having heard and considered the evidence introduced at the hearing and the arguments of Special Counsel and Respondent, finds by an affirmative vote of at least nine members that Respondent violated Canons 1, 2, 3A.1 and 3A.3 of the Code

of Judicial Conduct by virtue of his cumulative misconduct. The Commission finds that Respondent repeatedly used his position as Citrus County Court Judge to make allegations of official misconduct and improper criticisms against others, exceeded and abused the power of his office by imposing improper sentences and improper use of his contempt power, acted in an undignified and discourteous manner toward those appearing in his court, acted in a manner which impugned the public perception of the integrity and impartiality of the judiciary and closed and attempted to close public proceedings.[3] The Commission further finds that Respondent's cumulative conduct is unbecoming a member of the judiciary and demonstrates a present unfitness to hold office.

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[3]Specifically, the Commission finds that Respondent is guilty of the allegations contained in counts 1A, 1C, 1D, 1E, 1F, 1G, 1H, 2A, 2B, 2D, 2K, 2M, 2O, 2P, 3E, 3F, 4C, 4J and 5B of the Amended Consolidated Notice of Formal Charges and Amendment to Notice of Formal Charges. The Commission finds that Respondent is not guilty of the allegations contained in counts 1B, 2E, 2H, 2I, 2L, 2N, and 6C.

1. COUNT 1

Respondent has repeatedly used his position as Judge of the Citrus County Court to make allegations of official misconduct and improper criticisms against fellow

judges, other elected officials and their assistants and others, without reasonable basis or due regard for their personal and professional reputations.

(A.) The Commission finds that on or about September 15, 1988, in an interview with a reporter from a local Citrus County newspaper, Respondent made a number of disparaging and insulting remarks about Citrus County attorneys, including statements that local attorneys were not on time, bickered among themselves, acted goofy, did not talk like attorneys, or dress like attorneys and that he should put them in jail where they can read law books and learn how to act in court. Respondent's statements were widely reported in the local print media and many attorneys were offended by the remarks. The local bar association issued a public statement critical of Respondent's remarks following an unsatisfactory meeting with Respondent which was mediated by the county's Administrative Judge. Respondent ultimately issued a statement in the nature of an apology for his remarks.[4] Respondent's remarks were made without reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties and could reasonably tend to lessen the public confidence in the integrity and impartially of the judiciary.

[4]In his responsive pleadings and motions to dismiss, Respondent claims that the only ethical mistake he made as a judge was to issue the apology.

The clear and convincing evidence supporting this finding includes the testimony of reporter Cindy Cokely (T. Vol. II, pp. 321-354),[5] attorney Clark Stillwell (T. Vol. III, pp. 443-462), the bar association's statement (Commission Exhibit 2), and Respondent's written statement (Commission Exhibit 1).

(C.) The Commission finds that Respondent was the presiding judge in *State v. Pfeister*, a DUI case. In open court and during a hearing on February 20, 1991, Respondent accused the Office of the State Attorney for the Fifth Judicial Circuit with "routinely regulating" DUI offenses of lawyers and doctors to reckless driving for "no apparent reason." Respondent's remarks were made without reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties, were made without due regard for the professional and personal reputations of those accused of misconduct and could reasonably tend to lessen the public confidence in the integrity and impartially of the judiciary.

The clear and convincing evidence supporting this finding includes a transcript of the hearing (Commission Exhibit 3; T. Vol. II, pp. 304-318), and the testimony of State Attorney Brad King (T. Vol. III, pp. 485-501).

(D.) The Commission finds that in open court and in the same hearing in *State v. Pfeister*, Respondent accused State Attorney King of favoritism in the disposition of a DUI case while King was

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[5]A copy of the transcript of the hearing and the exhibits have been provided to this Court. Citations to the transcript will be indicated by T., followed by reference to the appropriate volume and pagination.

an Assistant State Attorney. Respondent's remarks were made without reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties, were made without due regard for the professional and personal reputations of those accused of misconduct and could reasonably tend to lessen the public confidence in the integrity and impartially of the judiciary.

The clear and convincing evidence supporting this finding includes a transcript of the hearing (Commission Exhibit 3; T. Vol.

II, pp. 304-318), and the testimony of State Attorney King (T. Vol. III, pp. 485-501).

(E.) The Commission finds that in open court and in the same hearing in *State v. Pfeister*, Respondent repeatedly demanded that the Chief Assistant State Attorney explain the exercise of discretion by the State Attorney's Office in charging the case as a misdemeanor rather than a felony and stated that the explanation was necessary so that Respondent could ascertain that the decision was not the result of politics and favoritism. Respondent's questioning of the Chief Assistant State Attorney was an unwarranted intrusion into the discretion of that office. Respondent's remarks were made without reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties, were made without due regard for the professional and personal reputations of those accused of misconduct and could reasonably tend to lessen the public confidence in the integrity and impartially of the judiciary. The clear and convincing evidence supporting this finding

includes a transcript of the hearing (Commission Exhibit 3; T. Vol. II, pp. 304-318).

(F.) The Commission finds that on June 10, 1991, in open court and on the record, Respondent accused State Attorney King and, by implication, Circuit Court Judge William Swigert, Chief Judge for the Fifth Judicial Circuit, with *ex parte* communications which Respondent claimed resulted in the improper revocation of his appointment as Acting Circuit Court Judge. Respondent also accused State Attorney King of improperly securing the revocation of his appointment as Acting Circuit Court Judge because King was displeased with Respondent's recent decisions in a Circuit Court case. Respondent's remarks were made without reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties, were made without due regard for the professional and personal reputations of those accused of misconduct and could reasonably tend to lessen the public confidence in the integrity and impartially of the judiciary.

The clear and convincing evidence supporting this finding includes a videotape of the proceeding in Respondent's courtroom (Commission Exhibit 4), and the testimony of Chief Judge Swigert (T. Vol. IV, pp. 585-648), Circuit Judge William Edwards (T. Vol. X, pp. 1531-1586), and State Attorney King (T. Vol. III, pp. 485-

501). Respondent stipulated to the authenticity of the videotape (T. Vol. II, pp. 301-302).

(G.) The Commission finds that Respondent was the presiding judge in *State v. Webb*, a DUI case. In open court and during

hearings on September 10 and 17, 1991, Respondent accused a captain and an investigator with the Citrus County Sheriff's Office of "trading official actions for other beneficial acts by the defendant" in releasing the defendant on his own recognizance. [6] Respondent's remarks were unnecessary for the proper fulfillment of his judicial duties, could reasonably tend to lessen the public confidence in the integrity and impartially of the judiciary and constituted a gross abuse of the power of his judicial office.

The clear and convincing evidence supporting this finding includes the official court file, the audiotaped record of the proceedings (Commission exhibits 5, 5A & 5B), and the testimony of Sheriff Charles Dean (T. Vol. VI, pp. 940-996), Captain Roberta Moffatt (T. Vols. V-VI, pp. 868-936), and State Attorney King (T. Vol. III, pp. 485-501).

(H.) The Commission finds that Respondent was the presiding judge in *State v. Riggs*, a case of contempt of court. In open court and during a hearing on March 10, 1992, Respondent accused the defendant and his Assistant Public Defender of deliberately falsifying a transcript used in the defendant's appeal. Respondent's remarks were made without reasonable factual basis, were unnecessary for the proper fulfillment of his judicial duties, were made without due regard for the professional and personal reputations of those accused of misconduct and could reasonably tend to lessen the public confidence in the integrity and

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[6]Respondent's sentencing of Webb is the subject of charge 4C.

impartially of the judiciary.

The clear and convincing evidence supporting this finding includes a video tape of the proceeding in Respondent's courtroom (Commission Exhibit 8), and the testimony of former Assistant Public Defender Johnnye Friedrich (T. Vol. VII, pp. 1080-1139). Respondent stipulated to the authenticity of the videotape (T. Vol. II, pp. 301-302).

2. COUNT 2

On various occasions Respondent exceeded and abused the power of his office by imposing improper sentences and improperly using his contempt power.

(A.) The Commission finds that Respondent was the presiding judge in *State v. Rouse*, in which the defendant was charged with misdemeanor possession of marijuana. Respondent ordered the unrepresented defendant to assist the Citrus County Sheriff in "two buys and two sells" of drugs as a condition of his sentence of twenty days imprisonment and two years probation. Incident to imposing the requirement of "two buys and two sells of drugs" as a condition of his sentence of twenty days in jail and two years probation, the Respondent had insufficient information to determine the suitability or desirability of the defendant's cooperation. This condition of the sentence was beyond the scope of his judicial authority and amounted to an abuse of his judicial power.

The clear and convincing evidence supporting this finding includes the official court file (Commission Exhibit 21), and the testimony of Sheriff Dean (T. Vol. VI, pp. 940-996), State Attorney

King (T. Vol. III, pp. 485-501) and Assistant State Attorney James Tarquin (T. Vol. XIII, pp. 1975-2015).

(B.) The Commission finds that Respondent was the presiding judge in *State v. Shirling*, in which the defendant was charged with misdemeanor possession of marijuana. Respondent ordered the unrepresented defendant to "assist the State Attorney's Office in catching a drug dealer" as a condition of his sentence of probation. Incident to imposing the requirement that the defendant "assist the State Attorney's Office in catching a drug dealer" as a condition of his sentence of probation, the Respondent has insufficient information to determine the suitability or desirability of the defendant's cooperation. This condition of the sentence was beyond the scope of his judicial authority and amounted to an abuse of his judicial power.

The clear and convincing evidence supporting this finding includes the official court file (Commission Exhibit 20), and the testimony of State Attorney King (T. Vol. III, pp. 485-501), and Assistant State Attorney Tarquin (T. Vol. XIII, pp. 1975-2015).

(D.) The Commission finds that Respondent was the presiding judge in *State v. Stanage*, in which the defendant was

charged with being a passenger in a vehicle in possession of an open container of alcohol. As a part of his sentence, Respondent suspended the defendant's driver's license for six months. The defendant respectfully questioned the fairness of the suspension and Respondent asked the defendant if he wanted the court to reconsider the sentence. When the defendant replied in the affirmative,

Respondent increased the suspension to nine months and asked the defendant if he wanted the court to reconsider the sentence again. When the defendant responded "yes sir", Respondent increased the suspension to one year. Respondent's treatment of the defendant was a gross abuse of the power of his judicial office.

The clear and convincing evidence supporting this finding includes the official court file and the audiotaped record of the proceeding (Commission Exhibits 13A and 13B).

(K.) The Commission finds that on March 15, 1992, Respondent directed the bailiff in his courtroom to summon a supervisor from the Citrus County Sheriff's Office to come to his courtroom to discuss court security. When the duty sergeant arrived, Respondent gave her instructions regarding the future

security arrangements for his courtroom. Respondent then threatened to hold the deputy in contempt if the Sheriff did not comply with his instructions. Respondent's threatening conduct was an abuse of the power of his judicial office.

The clear and convincing evidence supporting this finding includes the undisputed testimony of Deputy Sheriff Kim Amann (T. Vol. VI, pp 1001-1011).

(M.) The Commission finds that Respondent was the presiding judge in *State v. Oldag*, in which the defendant was charged with fleeing or attempting to elude a police officer. As part of his sentence of probation, Respondent ordered the defendant to perform forty hours of community service for the State Attorney's Office. Respondent advised the defendant that he would suspend ten hours of

the community service if the defendant washed the State Attorney's car with the T-shirt he was wearing in court. Respondent exceeded and abused the power of his office and failed to observe the

requisite high standards of conduct in his sentencing of the defendant.

The clear and convincing evidence supporting this finding includes the official court file (Commission Exhibit 10).

(O.) The Commission finds that Respondent was the presiding judge in *State v. Barth*, in which the defendant was charged with criminal mischief for tearing up a law enforcement handbook while in the county jail. Upon learning the defendant was a shrimper, Respondent stated shrimpers were unsavory characters who tended to be in trouble. Respondent first ordered that the defendant not associate with anyone engaged in the business of shrimping. Respondent then changed his order and placed her on probation with the special condition that she find alternative employment. Respondent's order did not have any relationship to the crime for which the defendant was convicted, related to conduct which itself was not criminal and was not reasonably related to future criminality; he exceeded and abused the power of his office and imposed an improper sentence.

The clear and convincing evidence supporting this finding includes the official court file (Commission Exhibit 11), and the

testimony of former Assistant Public Defender Friedrich (T. Vol. VII, pp. 1080-1139).

(P.) The Commission finds that Respondent was the presiding

judge in *State v. Douglas*, in which the defendant was charged with misdemeanor battery on his estranged spouse. As a special condition of probation, Respondent prohibited the defendant from having any contact with his children. Under the circumstances of this case, Respondent's order did not have any relationship to the crime for which the defendant was convicted, related to conduct which itself was not criminal and was not reasonably related to future criminality; he exceeded and abused the power of his office and imposed an improper sentence.

The clear and convincing evidence supporting this finding includes the official court file (Commission Exhibit 12).

3. COUNT 3

The Respondent acted in an undignified and discourteous manner toward litigants, attorneys and others appearing in his court.

(E.) The Commission finds that on or about March 27, 1989, Respondent exhibited rude, improper and inappropriate behavior in his chambers and in open court. Respondent recessed court and called an attorney who had been waiting for a hearing into his chambers. Once inside his chambers, Respondent berated the attorney, who was wearing a leather sports coat with matching slacks and tie, for being improperly dressed. While berating the attorney, Respondent offensively "poked" him in the chest with his finger. The attorney advised Respondent that he had worn the coat in approximately thirty-five state and federal courts in Florida without incident and that he did not believe the coat was

inappropriate courtroom attire. Nonetheless, the attorney apologized and informed Respondent he would not wear the coat in his court again. Respondent stated that was "not good enough" and required the attorney to wear Respondent's coat, which was several sizes too small, back into the crowded courtroom for his appearance before Respondent. The attorney testified he was greeted with laughter when he returned to the courtroom wearing Respondent's coat and described the incident as unnecessary and demeaning.

Respondent's undignified and discourteous treatment of attorney Harp violates Canon 3A.3 of the Code of Judicial Conduct, is evidence of Respondent's lack of judicial temperament and amounts to gross abuse of the power of his office.

The clear and convincing evidence supporting this finding includes the undisputed testimony of attorney Osa Harp, III, who testified before the Commission wearing the same coat (T. Vol. VII, pp. 1141-1173).

(F.) The Commission finds that Respondent was the presiding judge in *State v. Dobbs*, a misdemeanor criminal case. In July 1992, Respondent exhibited rude, improper and inappropriate behavior in open court directed toward the mother of one of the defendants when she questioned the fairness of Respondent's six month sentence of imprisonment of her son for spray painting vulgar graffiti on public property. Respondent addressed the defendant's mother in open court and stated "You know what his problem is, his problem is you. It is not me. It is you. I can tell by the way you are defending him." Respondent then engaged courtroom personnel and

spectators in colloquy designed to further embarrass the defendant's mother and, in doing so, needlessly utilized vulgar, inappropriate and highly offensive language. Respondent's discourteous treatment of the defendant's mother and the unfortunate, offensive and highly inappropriate colloquy violates Canon 3A.3 of the Code of judicial conduct and is further evidence of Respondent's lack of judicial temperament.

The clear and convincing evidence supporting this finding includes the official court file and the audiotaped record of the proceeding (Commission Exhibits 28A, 28B & 28C).

4. COUNT FOUR

The Respondent conducted himself in a manner which impugned the public perception of the integrity and impartially of the judiciary.

(C.) The Commission finds that Respondent was the presiding judge in *State v. Webb*, a DUI case. Respondent sentenced the defendant on September 10, 1991, and accused the Sheriff's Office of improperly releasing the defendant on his own recognizance as an act of favoritism. Respondent stated that a ten day sentence would otherwise be appropriate if it were not for the defendant's "improper" release on his own recognizance. Respon-

dent then sentenced the defendant to ninety days in the county jail as punishment for his "improper" release. On September 17, 1991, Respondent refused to mitigate the defendant's sentence and directed the defendant to "tell your friends and that's what you got for trading favors to get out of the Citrus County jail."

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Although the defendant's sentence was within the legal range, it is clear from Respondent's comments that the defendant's sentence was based on Respondent's unfounded allegations of impropriety. Respondent's sentence was vindictive, in violation of the spirit of due process, could reasonably tend to impugn the public perception in the integrity and impartiality of the judiciary and amounted to a gross abuse of power.

The clear and convincing evidence supporting this finding includes the official court file, the audiotaped record of the proceedings (Commission Exhibits 5, 5A, &5B), the testimony of Sheriff Dean (T. Vol. VI, pp. 940-996), Captain Moffatt (T. Vols. V-VI, pp. 868-936), and State Attorney King (T. Vol. III, pp. 485-501).

(J.) The Commission finds that Respondent improperly used the prestige of his judicial office and the resources of the State of Florida related to that office to conduct a private, unofficial investigation into alleged favoritism and corruption in Citrus County as a part of his defense in this inquiry. The evening of Respondent's Rule 6B hearing on the Notice of Formal Charges, he appeared on a local cable televisicn show. Respondent "speculated" as to the nature of the rumored investigation against him, criticized and insulted various public officials including the State Attorney, the Sheriff, and other judges, denied any unethical conduct and theorized that any investigation by the Commission resulted solely from pressure and harassment exerted on the Commission by Respondent's political enemies who were seeking revenge for Respondent's role in the removal from office of former

Citrus County Court Judge Leonard Damron. Respondent arranged for the display of his official title, name, courthouse address and telephone number during the broadcast and urged viewers with information regarding political favoritism in Citrus County to contact him at his judicial office and share their information.

Respondent requested that a deputy clerk obtain the driving records of various local attorneys, a neighboring judge and others as a part of his investigation and defense. Respondent did not make the customary payment for the records.

Respondent's unfounded and unnecessary public attacks and allegations of misconduct directed toward others and his use of his judicial office to further his investigation of a "good old boy" network impugned the impartiality of the judiciary. Respondent's use of the resources of the State of Florida in conducting his private investigation and defense was improper.

The clear and convincing evidence supporting this finding includes the testimony of the Chief Deputy Clerk of the Circuit Court of Citrus County (T. Vol. VIII, pp. 1331-1335), and Susan Smith, a deputy clerk who served in Respondent's courtroom (T. Vol. VIII, pp. 1292-1329). The evidence also includes a videotape of Respondent's television appearance, introduced into evidence by Respondent (Respondent Exhibit 20A & 20B), and the testimony of the host of the show, Thomas Franklin (T. Vol. VIII., pp. 1201-1216).

5. COUNT 5

The Respondent closed and attempted to close public proceedings and in doing so instructed and threatened others to keep the proceedings secret.

(B.) The Commission finds that in June 1991, Respondent was Acting Circuit Court Judge for Citrus County due to the temporary absence of the Circuit Court Judge normally assigned to the county's criminal docket. Without notice, Respondent summoned several attorneys from the State Attorney's Office and the Office of the Public Defender to come to the office of the absent Circuit Court Judge for an immediate hearing. The attorneys were taken into the judge's chambers still not knowing why they had been summoned there in the first place. Present were Respondent, the attorneys and a court reporter. Once in the judge's chambers, which are not open to the general public, Respondent called to order *State v. Barrett*, a high profile capital murder case. Respondent stated that it was his intention to schedule a status conference in the near future to handle "some administrative matters." He stated that the defendants would not need to be present and that he would not need the court file. He ordered that State Attorney King, his chief assistant and others be present for the conference.

Respondent stated that he did not want a "bunch of newspaper reporters" present and if necessary he would instruct them to leave. He advised the court reporter not to "wag tongues" and stated that if any reporters appeared he would know somebody talked. The conference did not occur because Respondent's appointment as an acting Circuit Court Judge was revoked.

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Respondent's conduct was clearly improper and contrary to the law and procedure relating to the closure of court proceedings established by this Court in *Miami Herald v. Lewis*, 426 So . 2d 1 (Fla. 1982) and its progeny.

The clear and convincing evidence supporting this finding includes a transcript of the hearing, stipulated into evidence by Respondent (Commission Exhibit 36; T. Vol. VII, pp. 1191-1192), and the testimony of Assistant State Attorney Lisa Porter (T. Vol. VII, pp. 1187-1201; 1223-32), and former Assistant Public Defender Edwin Bonnett (T. Vols. XII-XIII, pp. 2131-2181).

The evidence of Respondent's cumulative misconduct is virtually undisputed. The vast majority of the allegations were proven by official court records. Some of the allegations were

proven by evidence which was the subject of stipulations between Special Counsel and Respondent. Respondent was given ample opportunity at the hearing to present his evidence relating to the charges.

6. ADDITIONAL FINDINGS

(A.) The Commission finds, based upon the evidence introduced at the hearing, that the nineteen proven incidents of misconduct discussed above are not isolated events, but are a part of a pattern of similar misconduct, characterized by Respondent's arrogant, arbitrary and capricious abuse of the powers of his office. This finding is based, in part, on the testimony of Chief

Judge Swigert, who testified that he removed Respondent from criminal cases in October 1992, because the Citrus County Court had turned into "embarrassment" and a "circus" (T. Vol. IV, pp. 585-648), as well as the testimony of Circuit Judge William Edwards (T. Vol. X, pp. 1531-1562), Assistant Public Defender Angela Miller (T. Vol. XVI, pp. 2484-2527), Assistant State Attorney Liz Osmond (T. Vol. XVI, pp. 2556-2664), former Assistant Public Defender Friedrich (T. Vol. VII, pp. 1080-1139), and

attorney Harp (T. Vol. VII, pp. 1141-1173), who all testified regarding Respondent's abusive conduct.

The Commission finds that Respondent's proven incidents of misconduct, together with the evidence of his pattern of arrogant, arbitrary and capricious behavior clearly establish that Respondent lacks proper judicial temperament.

(B.) Respondent refused to testify in his own case and when called as an adverse witness his testimony was evasive (T. Vol. III, pp. 383-440). His actions, attitude and activities during the hearing were often disruptive, scandalous, improper and contemptuous (T. Vol. V. pp. 727-728). The Chairman, in charging Respondent with contempt of the Commission, stated that Respondent had continuously disregarded the instructions of the Chair, intentionally delayed the proceeding, made demeaning remarks to the Chair and failed to comply with the Chair's instructions for the orderly presentation of the evidence. (T. Vol. V, pp. 709-710).

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The Commission also finds that Respondent has admittedly utilized the services of his state paid judicial assistant in the preparation of his defense to these charges. The involvement of his

judicial assistant in his defense had not been incidental or occasional. To the contrary, based upon her testimony and Respondent's stipulations, her involvement has been substantial and consuming for approximately ten months. The evidence established that his judicial assistant prepared numerous and voluminous motions, pleadings, memoranda, petitions, exhibits, transcripts, subpoenas, correspondence and other material related to this inquiry. The Commission also finds that Respondent has made various long distance telephone calls at state expense and utilized other incidental resources of the State in his defense. [7]

III. CONCLUSIONS OF LAW

The Commission, having heard and considered the evidence introduced at the hearing and the arguments of Special Counsel and Respondent, finds by an affirmative vote of at least nine members that Respondent's cumulative conduct in violation of Canons 1, 2, 3A.1 and 3A.3 of the Code of Judicial Conduct is unbecoming a

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[7]The testimony of Respondent's judicial assistant, Joette Uzar, is found at T. Vol. VIII, pp. 1239-1290. Respondent stipulated that his judicial assistant prepared "all of the pleadings in this case and any other document...she did it while a JA in my office; that she was paid by state funds; that it took her hours; and it was a lot of work and a lot of stress and heartache" (T. Vol. VIII, p. 1241). Respondent also stipulated that his judicial assistant "used the telecopier, the

telephone, the typewriter...she has worked extensively on this case..." (T. Vol. VIII, p. 1254).

member of the judiciary and demonstrates a present unfitness to hold office. The Commission's findings are made in light of its application of the relevant authorities to the clear and convincing evidence of Respondent's misconduct.

The Florida Constitution provides for the Commission and vests it with jurisdiction to investigate and recommend to this Court the removal from office of any judge whose conduct during term of office demonstrates a present unfitness to hold office. Art V Sec 12(a), *Fla. Const.* Upon recommendation of two-thirds of the Commissioners, this Court may order the removal of any judge for conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office. *Id.* at Sec. 12(f). Malafides, scienter or moral turpitude is not required for removal from office of a judge whose conduct demonstrates a present unfitness to hold office. *Id.*

The Code of Judicial Conduct provides:

Canon 1
A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code shall be construed and applied to further that objective.

Canon 2
A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that

promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his personal relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or authorize others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Canon 3
A Judge Should Perform the Duties of This Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

...

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

In deliberating and reaching its decision, the Commission has considered the fundamental principle that conduct unbecoming a member of the judiciary may be proven by major incidents which indicate such conduct or by evidence of an accumulation of small or otherwise innocuous incidents which, considered together, show a pattern of conduct unbecoming a member of the judiciary. *E.g.*, *In*

Re Kelly, 238 So.2d 565 (Fla. 1970). The Commission finds that Respondent's nineteen proven violations over a period of approximately four years are a sufficient accumulation of incidents to establish a pattern of conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold judicial office.

Respondent's cumulative misconduct proven under Count One of the Amended Consolidated Notice of Formal Charges and

Amendment to Notice of Formal Charges violates the indicated Canons. Guided by *In Re Kelly*, 238 So.2d 565 (Fla. 1970), the Commission focused its inquiry on whether Respondent's motives or methods did violence to the Canons and therefore constitutes conduct unbecoming a member of the judiciary. *Kelly* teaches us that when a judge criticizes others, the criticism must be viewed as constructive or destructive. If a judge has been temperate and judicious, his criticisms will likely benefit the community. However, impetuous argument, criticism taken by methods which prevent honest discussion and fair rebuttal can only be expected to have a destructive result. *Id.* at 569-570. The Commission finds that Respondent's cumulative misconduct demonstrates an unacceptable pattern of hostility toward other judges, the State Attorney, the Sheriff, other elected officials and their assistants and others; the Commission further finds that Respondent's cumulative misconduct was destructive in nature, created significant turmoil within the Citrus County judicial system and is therefore conduct unbecoming a member of the judiciary.

Respondent's cumulative misconduct proven under Count Two of the Amended Consolidated Notice of Formal Charges and Amendment to Notice of Formal Charges violates the indicated Canons. Respondent threatened to hold a deputy sheriff in contempt if the Sheriff did not comply with Respondent's instructions relating to security in his courtroom. He compelled unrepresented defendants to work as confidential informants as a condition of their sentence without sufficient information to determine their suitability and desirability to be informants. He separated a father from his children, compelled a shrimper to quit her trade and even stated that he would give a defendant credit for a portion of his community service requirement if he washed the State Attorney's car with his T-shirt. When a defendant respectfully questioned the fairness of his sentence, Respondent doubled the suspension of the defendant's driver's license. The Commission finds that Respondent's misconduct demonstrates a lack of proper judicial temperament and a tendency to abuse the authority of his office; his arrogant, arbitrary and capricious abuse of the power of his office, which occurred over an extended period of time, is like that of *In*

Re Crowell, 379 So.2d 107 (Fla. 1980) and is conduct unbecoming a member of the judiciary.

Respondent's conduct proven under Count Three of the Amended Consolidated Notice of Formal Charges and Amendment to Notice of Formal Charges violates the indicated Canons. The disparity in power between a judge and a litigant or attorney requires that a judge be courteous, patient and understanding. Canon 3 A(3)

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requires that a judge "be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others...." Conduct reminiscent of a playground bully is improper, harms the integrity of and is conduct unbecoming a member of the judiciary. *In Re Eastmoore*, 504 So. 2d 756 (Fla. 1987).

Respondent's conduct proven under Count Four of the Amended Consolidated Notice of Formal Charges and Amendment to Notice of Formal Charges violates the indicated Canons. Respondent's misconduct has impugned the perception of the integrity and impartiality of the judiciary. It is clear that Respondent sentenced Webb to eighty additional days in the county jail

based on Respondent's perception of favoritism. Webb was never tried for any offense related to his release on his own recognizance because the investigations by the State Attorney's Office and Sheriff's office found no criminal violation. Nonetheless, Webb spent eighty days in jail based on Respondent's perception of impropriety.

Respondent's appearance on television, his criticisms and allegations of misconduct against others in that broadcast and his request for citizens to contact him at his judicial office with any examples of politics and favoritism was improper, cast serious doubt on Respondent's ability to be neutral and impartial, runs afoul of *In Re Kelly*, 238 So.2d at 565 and *In Re Taunton*, 357 So.2d 173 (Fla. 1978), and is conduct unbecoming a member of the judiciary. His use of state resources to conduct a private investigation and further his defense to these charges was unauthorized, contrary to established law, runs afoul of *In Re*

Lamotte, 341 So.2d (Fla. 1977), and is also conduct unbecoming a member of the judiciary.

Respondent's conduct proven under Count Five of the Amended Consolidated Notice of Formal Charges and Amendment to Notice of Formal Charges violates the indicated Canons. The evidence is undisputed and establishes that while an Acting Circuit Court Judge, Respondent conducted a closed conference and stated that it was his intention to conduct further closed proceedings in a criminal case without complying with appropriate law and procedure. By holding hearings without proper notice and in chambers without the presence of the defendants, by stating his intention to conduct further such conferences to handle "some administrative matters" and ordering and threatening others that the improper conferences were to remain secret; Respondent failed to respect and comply with the law, created impropriety and the appearance of impropriety and conducted himself in a manner unbecoming a member of the judiciary.

In order for our judicial system to function properly and fulfill its role in society, it is essential to maintain public confidence in the dignity, integrity and impartiality of the judiciary. When a judge continuously acts in a manner to undermine this confidence,

drastic action, including removal from office, is required. *In Re Trettis*, 577 So.2d 1312 (Fla. 1991).

III. RECOMMENDATION

The Commission hereby recommends to this Court, by a vote of at least nine members, that Respondent be removed from the Office

of Citrus County Court Judge. The Commission's recommendation is based upon and made in light of the clear and convincing evidence of Respondent's cumulative misconduct, consisting of at least nineteen proven incidents occurring over a period of approximately four years, which have undermined public confidence in the dignity, integrity and impartiality of the judiciary. Additionally, the turmoil in the Citrus County Court resulting from Respondent's misconduct is evidence of Respondent's general pattern of arrogant, arbitrary and capricious abuse of the power of his judicial office, his lack of proper judicial temperament and his conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold that office.

Respondent has repeatedly and consistently failed to even acknowledge the existence of his misconduct, much less demonstrate an understanding of its gravity. To the contrary, he has consistently and repeatedly characterized the charges against him as "trivial". The Commission is therefore convinced that if Respondent is permitted to remain in office, he, quite naturally and with a sense of impunity, would commit further violations of the Code of Judicial Conduct by continuing a pattern of arrogant, arbitrary and capricious abuse of the power of his office. The removal of Respondent from office is the only sanction which will adequately protect the public and restore confidence in the dignity, integrity and impartiality of the judiciary.

The Commission, in accordance with and pursuant to the applicable provisions of the Article V, Section 12 of the Florida

Constitution and the Florida Judicial Qualifications Commission Rules, by a vote of at least nine members and based upon clear and convincing evidence of cumulative misconduct, finds Judge Gary G. Graham violated Canons 1, 2, 3A.3 of the Code of Judicial Conduct and is guilty of conduct unbecoming a member of the

judiciary demonstrating a present unfitness to hold judicial office and recommends to the Supreme Court of Florida that Judge Gary G. Graham be removed from the Office of Citrus County Court Judge.

Dated the 20th day of April, 1993

Respectfully Submitted,

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

/s/Joseph J. Reiter
Joseph J. Reiter, Esq., Chairman
The Historic Capitol
Room 102
Tallahassee, Florida 32399-6000

DOCUMENT 3

Judge Graham's Proffer to an Empty Courtroom

- PRETRIAL CONFERENCE PAGE 314 -

* * *

THE CHAIRMAN: All right. Now, it is my intent, once again, to start at 9 o'clock, to take a morning break, to go to lunch in the afternoon, and then to go as late as we deem with that particular day or presentation of the evidence; but it's the Commission's intent to finish this matter by Friday.

JUDGE GRAHAM: One point of clarification?

THE CHAIRMAN: Sure, Judge.

JUDGE GRAHAM: After you leave, I'm supposed to voice my objections for the record?

* * *

- PRETRIAL CONFERENCE PAGE 317 -

(Recess from 5:39 p.m. to 5:41 p.m.)

JUDGE GRAHAM: I'd like to voice my objections to the proceedings on the record as allowed by the Chairman.

I would bring to the appellate court's attention that I'm standing in a hearing room before the bench, with no presiding official, making these statements. This is yet another first in my

experiences in process of law. I'd also -- let the record reflect that Special Counsel has left.

Mr. Bailiff, could you close the door? Mr. Bailiff, could you have that door closed, too, because of the --

As I was saying, this is -- Mr. Bostic and General Counsel have left, and I'm here arguing objections to the proceeding to Madame Court Reporter alone. This is yet another first in my experiences of what is supposed to be a process of law with the Judicial Qualifications Commission.

I've never before been involved in any proceedings where motions were heard without notice and without hearing, where the dispositions are approved by the Commission

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without notice of their hearing date, without an opportunity to argue the rulings of the Motion Committee, and where proffers are made after -- both evidence, relevancy, and objections are made to an empty courtroom after everyone leaves. I've never seen that done before, and I just hope it will convince the appellate courts that we are not proceeding according to any rules of law or procedure known to advocates of law.

I object, Mr. Chairman, to the fact that this motion in limine was somehow decided upon by the Motion Committee. I've never seen the Motion Committee -- excuse me -- this motion in limine with respect to this evidence; not the filed motion in limine, but the motion in limine which has been argued these past nine hours.

I never saw a member of the Motion Committee here except for Chairman Reiter. If he had any discussions with the members of the Motion Committee, I don't know what they were. I wasn't given an opportunity to challenge anything that he said to them. I was not willing to make arguments of law to the other

- PRETRIAL CONFERENCE PAGE 319 -

Motion Committee members. And somehow or other, the Motion Committee was able to basically destroy my case and prevent me from defending myself, and I have no idea on what basis they did that.

I would restate my objections to that process based on the decisional authority of Hastings v. United States and Nixon v. United States where the United States Supreme Court has stated that where a deliberative body is created by the constitution, that it is an impermissible denial of due process and unconstitutional to

delegate a subgroup to make those deliberative functions -- deliberative decisions. In this case we've had both an institutionalized delegation of that authority followed by an ad hoc delegation of that authority.

First, the Commission, by its own rules, allowed motions to be heard by a three-member group, thus denying the respondent judge the benefits of the diversity of representation contemplated by the Florida State Constitution and his right for the full body to hear the evidence and the arguments -- that's an

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institutionalized problem. It's inherent in the rules -- followed by the fact that in today's proceedings, evidently the Motion Committee itself subdelegated its authority to Mr. Reiter. And, of course, as I pointed out Mr. Reiter is an individual who has twice threatened me with contempt and, in his words, recommended that I be incarcerated. So I hope that the appellate courts will understand the degree of derogation that has been imposed on my fundamental right to constitutional procedures and due process of law.

I would object to the massive intrusion into the defense of this case, represented by the rulings on evidence, in which I'm

fundamentally not being allowed to raise any affirmative defenses, and I'm not being allowed to present collateral, circumstantial, and corroborative evidence into the record.

I would also note for the record that Special Counsel had an opportunity months ago, when the affirmative defenses were filed, to respond to those pleadings by a motion to strike. Special Counsel chose not to strike the affirmative defenses. Special Counsel

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chose to deny them. That closed the pleadings on or about December 30th. Now, the effect of not striking the affirmative defenses but denying them was to put them at issue.

And then, by Special Counsel's count, respondent judge then proceeded to take 81 depositions in approximately 35 days, many of which were directed to his affirmative defenses. Furthermore, respondent judge set about obtaining court files, audio transcripts, preparing transcripts of audio tapes, and obtaining -- strike that -- pursuing very expensive, time-consuming efforts toward proving his affirmative defenses.

And then, to compound the fact that the Commission has dismissed almost half of the charges brought against the respondent judge, it then says, "Not only have you wasted all that time, effort, and money toward 19 charges which we abandoned, but now all the time, effort, and money you have spent toward your defense on the affirmative defenses is wasted." And fundamentally, the Commission has taken the position that all that's at issue is: Did you say it? And, in our view, is it

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unethical.

And I am now in a position where, basically, I have nothing really to defend myself with; and I hope that the appellate courts will recognize this as substantial evidence of this Commission's real prejudice and bias against me, a prejudice which comes from the fact that I have, as part of what I thought were my ethical obligations to stand up for the integrity and independence of the judiciary, to criticize misconduct of those before the court and that those criticisms included criticisms of attorneys and judges and others involved in the court system and that now I am being judged by attorneys and judges and influential people.

And they not only are a group of attorneys and judges and influential people who are going to be my judges, but they are the people or the individuals or the institution that investigated and decided to charge me. And it seems apparent to me that the problem is: This Commission now does not want to face the reality that it made a mistake, and the way to avoid that reality is to not allow this

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respondent judge to defend himself.

I don't believe the Commission wants to hear how bad the conduct of some attorneys have been in this county, I don't think they want to hear about the politics and the favoritism in this small, rural county, and I don't think they want to know the truth. I think that this Commission just wants to find me guilty of misconduct.

And I would renew all of my previous objections to these proceedings, to the fundamental lack of fairness of them, and to the denial of my due process rights to make a defense against these false and trivial charges. End of objection.

(Proceedings conclude at 5:52 p.m.)

DOCUMENT 4

Excerpts from the Record Demonstrating the Conduct of the JQC during the Proceedings

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JUDGE GRAHAM: I accept the ruling but would now ask to proffer my opening statement for the purposes -- excuse me. Let the record reflect that this individual, Mr. Kaney, is over there again shaking his head no. I would ask to --

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JUDGE GRAHAM: Well, I want to be able to see the witness.

THE CHAIRMAN: If you stand right there, is that okay, Judge?

JUDGE GRAHAM: No. Because then I can't see the Commissioners.

THE CHAIRMAN: Well --

JUDGE GRAHAM: Let the record reflect that the Commissioners are laughing at that.

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JUDGE GRAHAM: The objection is that the trier of the facts is discussing the case with

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the attorney that is opposing me and correcting him, and I would move for a mistrial based on that.

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JUDGE GRAHAM: Another objection I have not been able to make yet is that there seems to be a disparity in the facilities being provided here.

Let the record reflect that Judge --

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Chairman Wigginton clucked at that. It may be funny to him, but --

THE CHAIRMAN: Please, Judge Graham --

JUDGE GRAHAM: Let the record reflect that the rest of the Commission -- several other members of the Commission are smirking at that.

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BY JUDGE GRAHAM:

Q I show you what's been marked as Commission's Exhibit No. 28-B. Can you identify that?

A It's an audio cassette.

JUDGE GRAHAM: Let the record reflect that members of the Commission are whispering with each other during the presentation of the evidence.

BY JUDGE GRAHAM:

Q Can you identify that any more clearly than the fact that it's an audio tape?

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JUDGE GRAHAM: Let the record reflect that they're continuing to discuss things while the evidence is being presented.

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JUDGE GRAHAM: Mr. Commissioner, due to the fact that I have been unable to properly prepare for trial, I have not been able to locate the witness list supplied by Mr. Bostic.

MR. BOSTIC: I have another copy.

I spoke too soon. I previously provided the respondent with a witness list. I don't have a copy right now. I can bring him a copy.

COMMISSIONER GILLMAN: Here's one right here.

JUDGE GRAHAM: Let the record reflect that one of the Commissioners has assisted the employee-attorney, Mr. Bostic, with a copy.

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COMMISSIONER KANEY: How many pages is this document?

MR. BOSTIC: It's approximately 20 pages, I think.

COMMISSIONER KANEY: Just so we know if

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we've got another 20 minutes or so.

MR. BOSTIC: Twenty-one pages.

COMMISSIONER KANEY: Thank you.

JUDGE GRAHAM: I would object for the record that the prosecutor, who was hired by the trier of fact, is discussing the case with the trier of fact, who is also asking questions of the trier of law.

THE CHAIRMAN: Judge, I have no idea what you just said.

JUDGE GRAHAM: What?

THE CHAIRMAN: I have no idea what you just said.

JUDGE GRAHAM: What I'm saying is: You decide the issues of law, they decide the issues of fact, he prosecutes me, and he's your employee, and he's your employee, and you're all discussing this case like it's a roundtable or something --

THE CHAIRMAN: Judge --

JUDGE GRAHAM: -- and that is a denial of due process.

THE CHAIRMAN: -- I have not discussed this case with anybody. Your statement --

JUDGE GRAHAM: He was making comments to

you.

THE CHAIRMAN: Judge, for the record, your statement you just made is inaccurate. I've been sitting here watching you reading that transcript. I have not spoken to anyone.

JUDGE GRAHAM: You keep --

THE CHAIRMAN: All right. Now, Judge --

JUDGE GRAHAM: But comments have been directed to you, and that --

THE CHAIRMAN: Judge, you are making statements on the record that are inaccurate, and I will correct the record. I have not been speaking to anybody.

JUDGE GRAHAM: I will stand corrected. This individual right here, Mr. Kaney, directed comments to you. You are correct. You did not respond. All of which would have been highly improper in a normal jury trial.

THE CHAIRMAN: Judge, I am waiting for your objections to that exhibit. We have now been waiting about eight minutes while you've been reading it, so --

JUDGE GRAHAM: If the prosecutor, the trier of fact, and the judge -- if the communications will stop, I can go ahead and

read this document and then be in a position to voir dire on it.

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JUDGE GRAHAM: I will note for the record that no one is objecting to the waste of time for this witness to peruse this document for several minutes. I would note that for the record.

Let the record reflect that the Chairman, the decider of law and presiding as a quasi judge in the matter, handed documents to General Counsel, who then handed documents to Special Counsel.

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JUDGE GRAHAM: Let the record reflect that the Commissioners are shaking their heads just because I'm attempting to show that this

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witness has no recollection of the event.

THE CHAIRMAN: The Chair did not see anybody shaking their head, but please go ahead.

JUDGE GRAHAM: This individual right here, Mr. Tate --

THE CHAIRMAN: Please continue.

JUDGE GRAHAM: -- was shaking his head and clucking his tongue about this.

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JUDGE GRAHAM: And I object, and I will note for the record that this individual right

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here came and grabbed me by the arm and told me to move.

THE CHAIRMAN: Judge, please return to where I asked you to stand.

JUDGE GRAHAM: I would like to voice my objection, because I have been charged --

THE CHAIRMAN: Judge, that is not a legal objection. Please back off --

JUDGE GRAHAM: I would --

THE CHAIRMAN: -- and go back to where you were standing.

JUDGE GRAHAM: -- like a record of what has occurred to me by --

THE CHAIRMAN: Judge, do not talk when I am ordering you to do something. . . .

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JUDGE GRAHAM: Please --

COMMISSIONER BARNES: I wasn't sleeping.

THE CHAIRMAN: Judge, please do not make comments to the Commissioners.

JUDGE GRAHAM: I think it's proper to ask them to wake up.

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JUDGE GRAHAM: I've lost that document that she just marked.

THE CHAIRMAN: It is not in the clerk's

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hands?

JUDGE GRAHAM: She was reading it, and that's the reason I couldn't find it. Let the record reflect that the Commission is laughing about that. Why it's funny that I couldn't find it --

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MR. BOSTIC: Yes, sir.

THE CHAIRMAN: The affidavit has been filed by Judge Graham indicating that Mr. Tate was reading the newspaper; that Judge Burnstein and Nancy were talking; that Mr. --

JUDGE GRAHAM: Excuse me.

THE CHAIRMAN: Do not interrupt me, Judge, please -- that Mr. Clark was reading the newspaper during the proceedings and appeared to be sleeping at one -- at one -- and it's not completed. Number four, Commissioner Burnstein was reading the comics in the newspaper. Number five, Mr. Kaney was making nonverbal gestures at Chairman Reiter. Six, that Sybil Barnes appeared to be sleeping during the proceedings. Finally -- and he says finally, "These individuals were ready, willing, and able to testify before

the Commission," and he has affidavits from a Helen Zebby, Z-e-b-b-y, George -- and I cannot read the writing --

MR. LIZANETZ: Lizanetz.

THE CHAIRMAN: -- L-i-z-a-n-e-t-z, Mr. Joe Bodi, B-o-d-i, and the last one is Alex I-l-n-y-z-k-y.

JUDGE GRAHAM: And Mr. Mason.

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THE CHAIRMAN: All right. The Commission will not take testimony. This is outside the rules. The Commission, according to Rule 26, has already been challenged once in toto and in person, and the affidavit filed will be considered by a vote of seven or more of the Commissioners voting in reference to whether you want to have an excusal of any of these individuals.

JUDGE GRAHAM: May I respond?

THE CHAIRMAN: No, you may not. This is a non-debatable motion as far as I'm concerned. The affidavit is what we travel on. I'm going to adjourn for one minute for a vote on this, and I'll announce my vote on it. We will do it in executive session. Please step out for one second.

JUDGE GRAHAM: I demand, under the public meetings law, to be present during this public meeting.

THE CHAIRMAN: Objection -- your request is denied. We'll be right back. I do not want anyone -- Mr. Bostic and Judge Graham, we're going to be right back after this.

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THE CHAIRMAN: Judge, will you pay -- don't turn your back to me and make comments to the Commission. I have just ruled. The question is being answered. Please pay attention to me. Please answer the question.

JUDGE GRAHAM: The Commissioner said, "Jesus Christ."

THE CHAIRMAN: Judge, please. Judge, I'm asking you to pay attention to your questions of this witness and my rulings. His question is --

JUDGE GRAHAM: I would move for a mistrial based on the fact that this Commissioner has prejudiced the minds of the other Commissioners by making an explanation of "Jesus Christ." And that's exactly the way he did it --

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JUDGE GRAHAM: May I ask permission to note for the record that Ms. Barnes was sleeping again? And I tried to get the television to get her, but by the time I got over there, she woke up.

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JUDGE GRAHAM: Let the record reflect --

THE CHAIRMAN: Don't make any remarks to the record unless you have permission from this Chair.

JUDGE GRAHAM: May I have a permission to note for the record that Mr. Tate is laughing at the fact that I asked permission from Ms. Schumacher --

THE CHAIRMAN: All right. Move on. . . .

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JUDGE GRAHAM: I would like to clarify for the record -- I have received a transcript of our previous hearing proceedings,

and I would like to clarify for the record that the man that grabbed me during the proceeding was Mr. Roy Rhodes, General Counsel for the JQC.

MR. RHODES: I did what?

JUDGE GRAHAM: Grabbed my arm, right

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here.

THE CHAIRMAN: All right. What else do you have to present?

JUDGE GRAHAM: Any objections to that? Anyone?

THE CHAIRMAN: Please continue.

MR. RHODES: No objection to the fact that I moved you out of my line of vision from the Commission, Judge Graham, pursuant to the direction that you had already received from the Chairman.

JUDGE GRAHAM: I would also make an objection at this time, based on due process of law, that the rulings of this Commission on what evidence I may present are so convoluted and complex that I can honestly state to you, Mr. Reiter, that I really -- I am going to be proceeding in great fear of not being able to

comply with them, because they are so complicated and complex and convoluted that I don't understand them.

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I would make a note for the record -- permission -- that Ms. Burnstein is looking at some type of calendar.

THE CHAIRMAN: Judge, would you please finish your proffer?

JUDGE GRAHAM: I would respectfully request --

THE CHAIRMAN: Are you finished with the proffer? We are going to conclude it if you don't continue with your proffer.

JUDGE GRAHAM: Okay. I will continue under protest. And that she's continuing to look at it.

THE CHAIRMAN: Judge, please do not be debating the issue with me. Finish your proffer.

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judges. The trial judge can do relatively little about bad preparation, inept examination of witnesses, or general incompetence of

the lawyers, but he can do a great deal about the bad manners and bad ethics of the fringe of the legal profession who sometimes make the trial look like a brawl. I regret to say that too few trial lawyers" -- excuse me; "too few trial judges" -- "exercise proper control of their own courtrooms to enforce minimum standards of etiquette, deportment, and ethics. But the infirmities and shortcomings of judges is not my subject, and I will leave this parenthetical observance as a mea culpa of the judiciary."

I understand that's when you want me to stop.

THE CHAIRMAN: Thank you, Judge. All right. We will read and we will review the article again as Exhibit No. -- 20. Is that correct?

COMMISSIONER GILLMAN: 21.

THE CHAIRMAN: 21. Exhibit No. 21.

JUDGE GRAHAM: May have permission to note for the record that Ms. Burnstein sneered at me during the rest of my presentation?

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JUDGE GRAHAM: I want to lay a predicate for why this his fellow has had numerous contacts with the court system because -- when you're a self-made businessman making millions of dollars, you wind up in court an awful lot. That's all I'm trying to do.

MR. BOSTIC: Well, this witness is listed on the list as --

JUDGE GRAHAM: Okay. I'll withdraw the question.

THE CHAIRMAN: All right. Proceed, please.

BY JUDGE GRAHAM:

Q Sir, as a result of your --

JUDGE GRAHAM: I would like the record to

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reflect that Ms. Burnstein is laughing at that.

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THE WITNESS: Could I go? I mean --

THE CHAIRMAN: I presume so.

JUDGE GRAHAM: David Cropper.

Excuse me. Permission to note for the record that Mr. Bostic is conferring with General Counsel for the JQC.

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THE WITNESS: In the most general way, sir. I have not read them with particularity. It is my way to read things with particularity and be able to address them in detail. I cannot do that. As a lay person, I know about them.

COMMISSIONER TATE: You made a comment, and I'm quoting --

JUDGE GRAHAM: I object to the continuing adverse impeachment of my witness -- my character witness -- by the trier of facts, and I would move for a mistrial.

THE CHAIRMAN: Your motion for a mistrial is denied, and I don't look at these questions as adverse questions.

JUDGE GRAHAM: And I object based on the due process rights --

THE CHAIRMAN: I don't look at them that way.

JUDGE GRAHAM: -- of the federal constitution.

THE CHAIRMAN: I understand that, Judge.

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You may continue, Mr. Tate.

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JUDGE GRAHAM: Mr. Commissioner, at this time I wanted to make a mistrial based on the following conduct:

During the testimony of Mr. Cury, I asked the question, "Does a leopard change his spots?" One of the Commissioners said, "Yes," and that is why Mr. Cury responded to that, and he was the person that Mr. Cury was saying -- in response to what that gentleman said.

That is an obvious showing of bias and prejudgment of me and -- not only shows his bias and prejudgment, but it affected the other members of -- the triers of the fact who are supposed to be impartial, and I would move for a mistrial.

THE CHAIRMAN: Your motion is denied. Please continue.

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JUDGE GRAHAM: And I would preserve my federal objection to due process of law.

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THE CHAIRMAN: Judge, my ruling is: Unless it is something that could not have been presented in the case-in-chief that -- I'm going to stand on that, and they will not be allowed as rebuttal witnesses. Now, my question is: Is there anyone else, Mr. Bostic?

MR. BOSTIC: No, sir.

THE CHAIRMAN: Anything of the Commission members before we adjourn in reference to anything?

Now, is there going to be any other rebuttal testimony, Mr. Bostic?

MR. BOSTIC: No, sir.

COMMISSIONER GILLMAN: We'd like to talk. Could we have a conference?

THE CHAIRMAN: All right. It's requested by one of the members to have a conference.

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You will wait until we come back. It may be in reference to my recent ruling.

(Recess from 12:28 p.m. to 12:40 p.m.)

THE CHAIRMAN: All right. The Chair's ruling is going to be reversed on the basis as follows: The rebuttal witnesses -- those two rebuttal witnesses will be allowed, . . .

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Q Who are the other judges that you have seen that have engaged in bizarre conduct?

A One that's a little strange would be -- he's now a circuit judge -- Vernon Douglas.

Q And what --

A Third Judicial Circuit.

Q -- circuit he is in?

A Third.

Q And what other strange, bizarre judges do you know?

A Another one that was a little strange is Judge Royce Agner, Third Circuit. He's now retired.

Q So in addition to me, Judge Douglas is bizarre and Judge Agner is bizarre. Correct?

A They were a little strange, yes.

Q Any others that were bizarre?

A Not to my knowledge, no.

Q And why was Judge Douglas so bizarre?

A Judge Douglas, at the time, was a county court judge. If someone from Georgia came into court, he would ask the clerk for a crayon so they

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could sign their name.

THE CHAIRMAN: All right. Please.

JUDGE GRAHAM: Let the record reflect that the jury is laughing, and I'd like to subpoena Judge Douglas and have him tell his side of this story.

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Q And didn't you state in the newspaper that the reason you were going to go along with that was because you just didn't think that the ruling of Judge Graham had been fair? Isn't that true?

A I don't know if I said that. I think it.

JUDGE GRAHAM: Let the record reflect a member of the Commission laughed at that.

THE CHAIRMAN: Judge, please do not be saying "Let the record reflect" unless you get permission from me. Let's move on.

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BY JUDGE GRAHAM:

Q And isn't it true that the information that you provided him was incorrect also?

JUDGE GRAHAM: Let the record reflect that one of the Commissioners is audibly yawning.

THE CHAIRMAN: Judge, what did I say about doing that?

JUDGE GRAHAM: Excuse me. I apologize. Permission?

THE CHAIRMAN: All right. Go ahead and say he yawned, somebody yawned.

JUDGE GRAHAM: With permission I would state for the record that one of the Commissioners audibly yawned so loud I could hear it almost halfway across the room.

THE CHAIRMAN: Okay. Let's continue on.

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MR. BOSTIC: The next group: Approximately ten witnesses to testify concerning the alleged misconduct of the members of this Commission. Jurisdiction, relevancy.

JUDGE GRAHAM: Now, let's see how

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unbiased and prejudiced the Commission is. I've got people from the community who have watched these proceedings. I would like to proffer their testimony. They have watched these Commissioners read newspapers, laugh, giggle, talk amongst each other. This woman, bless her heart, goes to sleep. I'm not trying to embarrass her, but she can't stay awake. We've got one guy over here who sits here and -- Mr. Reiter, I've got people from that audience, citizens of this state who have no axe to grind or no grudge, who are willing to come in and testify that he's over here going (gesturing), "Cut him off," and (gesturing) like this to you.

Now, I don't know whether you've seen that or not, but there's people in that audience that have seen it. And that's

improper, and that goes to my argument that this Commission, after bringing these silly, trivial charges against me and refusing to listen to me at a 6B hearing, has got itself in a position where you've got to find me guilty. You've got to.

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THE CHAIRMAN: Go ahead.

JUDGE GRAHAM: Can I see what Mr. Rhodes has given --

THE CHAIRMAN: No, you cannot. Please proceed.

JUDGE GRAHAM: Let the record reflect that Mr. Rhodes has given notations to the Chairman.

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DOCUMENT 5

Excerpts from the Record Demonstrating Preoccupation with Rushing the Proceedings

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THE CHAIRMAN: Judge, your 30 minutes are used up. Would you please conclude your remarks now.

JUDGE GRAHAM: Mr. Commissioner, we are talking about -- I've got four college degrees -- engineering, master's in Business Administration, two law degrees -- ten years as an attorney. A whole lifetime is at stake. And what you're doing right now is completely consistent with the Commission's entire pattern and practice as it applies to me as a litigant. I am here fighting not just for an entire career; thousands of hours of effort, 30,000 people that I personally shook hands

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with, four elections. Okay?

I have paid the price standing up for the independence and integrity of the judiciary, and this Commission and Mr. Bostic is trying to ruin that career, destroy that effort, and more importantly, take away from the people of this county their democratic right to elect the judges they want, and you don't want to give me more

than 30 minutes to make an opening statement on 41 charges of misconduct? That is indefensible, Mr. Chairman.

THE CHAIRMAN: Judge, we'll give you another five minutes.

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THE CHAIRMAN: Judge, I've given you now 40 minutes. Will you please wrap up your closing.

JUDGE GRAHAM: I'm not -- I haven't even begun.

THE CHAIRMAN: All right. Then I am going to adjourn the Commission. I apologize. I told you the time. There was no objection to it when we set it. I gave you 40 minutes. If you don't want to conclude -- the Commission is now going to go into luncheon recess.

It is now 12 -- say 12:05. We will resume in one hour, at 1:05.

Thank you very much.

(Recess from 12:05 p.m. to 1:08 p.m.)

THE CHAIRMAN: Good afternoon, Mr. Bostic, Judge Graham. The Commission is back. It's now about -- according to that clock -- 1:10, and we're ready to present evidence.

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THE CHAIRMAN: You can certainly look at it, Judge, but we are not going to sit here for three, four, five minutes while you calmly go through each and every item in those documents and look at them when this should have been done before. And that was in my pretrial order for you people to look at your exhibits, and it was not done, apparently.

JUDGE GRAHAM: Excuse me. I think I should address that pretrial order. I think it was called "In Re Order" -- "In Re" --

MR. BOSTIC: Order In Re: Trial.

JUDGE GRAHAM: Order In Re: Trial. This was an order received without -- no one moved for this order. This order was made, I can only presume or understand, sua sponte by the Chairman or whoever signed it. And I received

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it in the middle of an extremely busy deposition docket where I'm trying to discover the facts of this case, and I have had no opportunity whatsoever -- no ability to comply with that order.

And then to bootstrap that and say, "Okay. Because you couldn't comply with an order that we threw on you three or four days before trial when you were in the middle of 14-hour-a-day depositions trying to discover the facts of the case, we're not even going to allow you to look at the documents before we introduce them into evidence," is an error of law and a denial of my fundamental rights protected by both the federal and the state constitution.

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COMMISSIONER KANEY: How many pages is this document?

MR. BOSTIC: It's approximately 20 pages, I think.

COMMISSIONER KANEY: Just so we know if

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we've got another 20 minutes or so.

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THE CHAIRMAN: Judge, I am waiting for your objections to that exhibit. We have now been waiting about eight minutes while you've been reading it, so --

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THE CHAIRMAN: I understand that, Judge, but we -- I want the record to reflect that on the last series of questions, you went over there and stood about three or four minutes while you were reviewing it. So let's please proceed.

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JUDGE GRAHAM: I would like to argue the materiality and relevancy.

THE CHAIRMAN: I've heard the question. I've ruled on it. Please proceed.

Judge Graham, it has been four minutes since your last question. I would ask you to proceed.

JUDGE GRAHAM: I will state for the record that the only reason it has been four minutes since my last question is because the Commission has consistently refused ::

THE CHAIRMAN: Judge, there is no necessity for argument. There is no legal motion before the Commission. Please proceed.

JUDGE GRAHAM: Mr. Commissioner, you do not have to ask me to proceed. I will proceed at all possible haste throughout these

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proceedings.

THE CHAIRMAN: Judge, I'm going to give you one more minute to ask a question; otherwise, I will presume you have finished your cross-examination.

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Judge, I am not going to have the Commission sit here and watch you read that exhibit. I've told you to be prepared. Now,

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are we going to wait another five minutes until you decide to ask another question?

JUDGE GRAHAM: Mr. Chairman, you told me to be prepared. I have begged for the opportunity to be prepared, and you've denied it.

THE CHAIRMAN: Judge, there is no doubt in my mind that you are intentionally delaying this trial, and I'm asking you to proceed forward.

JUDGE GRAHAM: Yes, Mr. Chairman.

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THE CHAIRMAN: Judge Graham, it has now been three and a half minutes since you asked your last question, and there is no doubt in my mind that you are intentionally delaying this trial, and I'm going to ask you to move on, please.

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THE CHAIRMAN: The Chair has now seen a large file box with numerous documents that have not been marked as I have requested. I am not going to allow any more testimony in reference to those documents. You can proffer them after. I had asked you on several times to mark these beforehand. You have dragged your feet, taken one document at a time, going back and forth, consuming the Court's time at three to five minutes on each question; and I'm not going to allow that.

You are violating the provisions of the Florida Statute 90.612, and I'm going to ask you to continue on on any other subject matter but those documents.

JUDGE GRAHAM: I would like to --

THE CHAIRMAN: You may proffer those documents subsequent to the testimony that's going to be presented by this witness.

JUDGE GRAHAM: I would like to respond.

THE CHAIRMAN: No.

JUDGE GRAHAM: I would like to make an objection.

THE CHAIRMAN: What legal objection are you making?

JUDGE GRAHAM: I would like to make a motion for a mistrial --

THE CHAIRMAN: Motion denied.

JUDGE GRAHAM: -- and I would like to state the basis for it.

THE CHAIRMAN: Motion denied. . . .

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JUDGE GRAHAM: The papers fell off here.

COMMISSIONER KANEY: Mr. Chairman, may I suggest that -- rather than have us sit here while he fumbles through papers, that we pull Mr. King off the stand, bring in Judge Swigert, get his in and off, and then put Mr. King back on perhaps tomorrow, if necessary. But it appears to me that it's --

THE CHAIRMAN: I was thinking of doing that, but I wanted to see if we could finish with Mr. King out of deference to his time schedule.

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JUDGE GRAHAM: Mr. Chairman, after being in hearing from nine to six yesterday, from nine until 6:30 today, with the Chair only allowing me a 20-minute break, I am so exhausted right now that I cannot properly defend myself in these proceedings and would request that the Commission adjourn until tomorrow.

THE CHAIRMAN: No. I'm going to finish this witness. Judge, you had ample time to get ready, you had breaks during the lunch hour to do whatever you did, and we are going to continue. The Commission has driven from Ocala to be here. I was here at 8:15 waiting for you to appear as I requested. You did not show on the evidentiary stuff, so I will take no further argument. We will complete this witness. Please continue.

JUDGE GRAHAM: Mr. Chairman, I didn't say I wasn't prepared. I said I'm too exhausted to continue.

THE CHAIRMAN: Please continue. You

haven't even --

JUDGE GRAHAM: I would object on the basis of due process of law that --

THE CHAIRMAN: I have ruled on it --

JUDGE GRAHAM: I understand.

THE CHAIRMAN: -- and if you want to do anything on the record, you can do it after we finish with the witness.

JUDGE GRAHAM: Your Honor, I object to that. You are making it completely impossible for me to perfect my record on appeal. There is no way I'm going to remember this myriad of objections and proffers after --

THE CHAIRMAN: Are you finished asking questions, Judge?

JUDGE GRAHAM: No, I have not. I will need to take a moment to make a note of this.

THE CHAIRMAN: All right. I'm going to give you one minute. I am not going to delay the trial anymore for you to go digging around, like you've been doing, looking at the same documents, telling us that you need more time to find documents. Either you're going to ask questions now or else this witness will stand down.

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JUDGE GRAHAM: Yes, I'll ask a question.

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THE CHAIRMAN: That is now three minutes,

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Judge, since I've asked you to proceed. Are you going to proceed?

JUDGE GRAHAM: Yes, I am. I was looking for the document with respect to the jail release committee. I can't find it in the time of three minutes given to me by the Commission within the framework of this 41-count charge going back five years.

THE CHAIRMAN: Do you have any further questions?

JUDGE GRAHAM: Yes, I do.

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MR. BOSTIC: We are moving at a pace that's much slower than I anticipated. I have said in my motions to dismiss that I believe that the matters here are of great importance and should be resolved without delay.

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JUDGE GRAHAM: See, after ten hours -- I apologize. I apologize not only to the Chairman, but I apologize to the public for standing here and being at a point where I can only half stutter my questions. And I object on due process grounds that this violates my fundamental right to due process and a fundamentally fair procedure where I am put under this type of an ordeal from nine in the morning until 7 o'clock at night with a 20-minute lunch break. And the statements of the Chair that I had other times to relax is not true. At all other times I was scurrying around trying to respond to implicit threats to put me in jail today.

Mr. Chairman, I have much more to get into with this individual. After ten hours -- more than ten hours -- and without being allowed to prepare and without being allowed to get my deposition from this individual, I can't proceed. It's physically and procedurally impossible for me to proceed at this time.

THE CHAIRMAN: So noted. Judge, you are

now released to return to your activities. I don't know if you're under subpoena by anyone else.

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JUDGE GRAHAM: Sure. Well, let me just finish one thought.

THE CHAIRMAN: I'll give you two minutes. Okay?

JUDGE GRAHAM: Two minutes. Okay.

Look. There's an item of relevancy that you're not allowing me to argue. . . .

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JUDGE GRAHAM: May I ask permission to note for the record that I do not have a continuing objection; that these are each individual objections?

THE CHAIRMAN: No. I am not going to delay the trial. You can make your motion at a later time. We are proceeding with the cross-examination of this witness. Please proceed.

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JUDGE GRAHAM: Okay. If you'll remind me.

I would like to -- permission to make a statement on the record that if I had been allowed to make an opening statement, this would already be obvious; but I was cut short and not allowed to make a statement that I would have made then if I had been given the time. Permission to --

THE CHAIRMAN: Judge, we are in the matter of where you're going on cross-examination. Please continue. What is the purpose of the line of questioning that you are now pursuing?

JUDGE GRAHAM: If I could find the formal charge -- have a moment to find the formal charge among the 41 counts.

THE CHAIRMAN: You are once again delaying this trial, and I warn you, I am not going to put up with delays. Please go forward.

JUDGE GRAHAM: I'm looking for it. As soon as I find it among these 41 counts, I'll begin.

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And I will point out for the record that at one point you were timing me. You were timing me. You were saying, "You took three minutes to write that note." That was with respect to, I believe -- I'm not certain -- item four.

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JUDGE GRAHAM: I did not stipulate to its relevancy; and before proffering it to the Commission, I would request the opportunity to view it first.

THE CHAIRMAN: Well, I'm not going to delay the proceedings anymore. It's been entered into evidence, and I'm going to allow it to be shown for the weight to be given by the Commissioners as they want. I'm coming down.

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JUDGE GRAHAM: I did not stipulate to its relevancy; and before proffering it to the Commission, I would request the opportunity to view it first.

THE CHAIRMAN: Well, I'm not going to delay the proceedings anymore. It's been entered into evidence, and I'm going to allow it to be shown for the weight to be given by the Commissioners as they want. I'm coming down.

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MR. BOSTIC: Your Honor --

A -- he would have, yes, sir.

MR. BOSTIC: Mr. Chairman, I'm going to object on relevancy. If Judge Graham has a point, then he needs to get to it. It's been approximately 35 minutes, and we aren't even beyond the three or four simple characteristics of this file.

JUDGE GRAHAM: May I respond?

THE CHAIRMAN: No. The objection is overruled, but, Judge Graham, I will ask you to proceed.

JUDGE GRAHAM: May I proffer a statement for the record?

THE CHAIRMAN: At a later time. Please continue with your cross-examination of the witness.

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There was a statement made by Mr. Bostic complaining that it took 35 minutes to get the answers to five questions. And I had wanted to respond to that by saying that the reason was not because of the questions; the reason was because of the evasiveness of the witness. I just wanted to make that point for the record.

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JUDGE GRAHAM: Permission to look through my files. I have a transcript of that proceeding.

THE CHAIRMAN: Please hurry, Judge. You're delaying the trial. I would appreciate it if you would have your documents ready. Please continue and get your documents. You need to make no comment. I'm giving you time to get the records, so please do it.

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JUDGE GRAHAM: I cannot do it in five minutes. I make a further objection on the basis of due process of law.

THE CHAIRMAN: Well, I'm going to give you five more minutes, and then we can do it later on.

JUDGE GRAHAM: Later on -- I will be unable to do it after another six hours of these proceedings, and I will have lost my arguments. . . .

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THE CHAIRMAN: You do not have to make

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explanations. Please move. This particular question now has taken three minutes. Let's move along.

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patiently waiting for you to ask your next question, and I am now going to suggest to you that I am going to finish the cross-examination unless you move along with the proper procedure, asking questions, and quit delaying in this courtroom.

Now, I want to get this witness done, and I have already ruled that you cannot go into anything on the impeachment or bias because you've covered that ad nauseam. You cannot go into areas of bias -- I'm sorry; undue influence -- except for one more matter. You have already dealt with two of them.

So unless you limit your questions in that area, we are going to conclude the cross-examination of him pursuant to my ability under 90.612. And then if you have any proffers, you will make the proffers with Mr. King. And, Mr. King, I'm going to ask you to return later in the day, because we are going to continue with taking testimony here.

JUDGE GRAHAM: May I confer with co-counsel?

THE CHAIRMAN: Yes, sir.

(Discussion off the record.)

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. . . We are starting today, and we are going to complete this hearing by Friday. . . .

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A No, sir.

Q As a result of these conversations, did you take actions to have me removed from the felony docket?

A Yes, sir.

Q At any time did you make any attempt to discover the purpose of the closed meeting?

A No, sir.

THE CHAIRMAN: Judge, I am not going to allow to you take three to four minutes in

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between questions again. If you do not ask a question, I'm going to relieve -- I'm going to allow this witness to stand down. So please proceed. All right?

JUDGE GRAHAM: Mr. Reiter, the only reason it takes me so long is because I have to sift through the things that may have been disallowed by the Chair, and I do not want to ask a question that the Chair has ruled I cannot ask.

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JUDGE GRAHAM: I have located the exhibit number that he was shown during the deposition. The court reporter may be able to help me locate that to the document number.

THE CHAIRMAN: Well, Judge, we have been waiting three and a half minutes, nearly four minutes, for you to find this. I'm going to wait 30 more seconds. If you don't find it, we're going to move on, Judge.

JUDGE GRAHAM: I'll recall him tomorrow morning.

THE CHAIRMAN: No, you're not.

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JUDGE GRAHAM: Mr. Reiter, with all due respect, if I had been given the time to prepare for this case, I would be able --

THE CHAIRMAN: I'm asking you to move along.

JUDGE GRAHAM: I'm trying my best.

THE CHAIRMAN: Now, if you don't find that, then ask him another question. You can proffer the question later on.

JUDGE GRAHAM: I am going to look for the answer until the Chair instructs me to sit down, if that's suitable to the Chair.

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THE CHAIRMAN: Okay, Judge. Judge, when you say you have one last witness, don't anticipate this Commission looking at a tape for three hours. I'm going to tell you that now. And I don't know how long we may look at the tape. And if we're not -- and we finish within a -- before 5 or 6 o'clock, I suggest strongly that you have other witnesses to go. All right?

JUDGE GRAHAM: Mr. --

THE CHAIRMAN: Because we're going to finish this by Friday.

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JUDGE GRAHAM: May I have a brief recess to get my own court reporter in here to do it?

THE CHAIRMAN: Well, I'm not going to delay --

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JUDGE GRAHAM: I believe about 50 more minutes.

COMMISSIONER TATE: Five 0?

JUDGE GRAHAM: Five O. It's only 4:30. The Commission kept me here until 7:30.

THE CHAIRMAN: Judge, that is -- Judge, we're going to watch a little bit more of the next tape, maybe ten or fifteen minutes, and then we're probably going to break.

JUDGE GRAHAM: And then come back and listen to the rest of it?

THE CHAIRMAN: I don't know.

JUDGE GRAHAM: I just stress to you, this is the actual public response to this type of activity. This is not the type of thing --

THE CHAIRMAN: Judge, I understand that. Just -- please. We're taking evidence now and not closing argument.

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you understand what I'm saying? I'll find those as material and as issues that should be presented to the Commission if you knew of them and if your comments during the particular allegation occurred based upon your knowledge of these alleged driving violations corrections that were done by someone.

JUDGE GRAHAM: I would just proffer them. I believe it's Mr. Bostic's burden to prove I didn't know about them, not mine to prove I did. I do not have to prove anything. He has got to carry the burden of the case, and he hasn't done it.

THE CHAIRMAN: Well, Judge, we have gone past the allegation where he has presented evidence -- at least a sufficient amount of evidence to get past a motion to dismiss on it. Whether you want to present evidence on it is up to you. But if you are presenting evidence, you have to show that it's related to your defense. And unless you knew of those violations and that was the basis of your opinions, then I can't let them in. That's what the facts are, Judge.

JUDGE GRAHAM: Mr. Reiter, I formed an

COMMISSIONER KANEY: Mr. Chairman, it's now been at least two minutes since --

THE CHAIRMAN: Let's go, Judge.

COMMISSIONER KANEY: -- and I was wondering if we could at least know who the next witness is so we could have them come forward.

THE CHAIRMAN: Who is your next witness, Judge?

JUDGE GRAHAM: Mr. Chairman, I apologize --

THE CHAIRMAN: Judge, don't take issue with me.

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JUDGE GRAHAM: I understand. Do you realize that that is approximately only four minutes per charge?

THE CHAIRMAN: Well, we know what it is, and we --

COMMISSIONER GILLMAN: 5.76.

THE CHAIRMAN: Judge, that is a -- we feel that the totality of the time, two and a half hours, is more than reasonable for you to make your closing statement.

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THE CHAIRMAN: Thank you very much, Rollie. I appreciate the help.

All right. What I'm going to do -- now, listen to me. The law is very clear that surrebuttal is really -- there is no such thing. However, in light of the fact that there was -- in this one area that you talked about, in the area where you were supposed to have been rude and she was all upset about it -- only as to those areas will those deputies testify, and I expect you to do it in a very, very short time.

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COMMISSIONER DEMERS: Can we take a short recess, please?

THE CHAIRMAN: For the purpose of my ruling?

COMMISSIONER DEMERS: Yes, sir.

THE CHAIRMAN: No. I'm not going to change my ruling. Let's do this quickly, Judge. Let's bring the person in.

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DOCUMENT 6

Excerpts from the Record Where Proffers Were Denied

notice at all. Is that what you're --

JUDGE GRAHAM: I had no notice. The first notice I had that we were going to be arguing this motion to dismiss was when the Commission -- Mr. Bostic announced it some five minutes ago.

THE CHAIRMAN: All right. That is proper grounds for argument, and if you are not prepared to argue the motion in limine, I will not allow that to be argued; but I will deal with the materiality and relevancy of witnesses to be called and issues to be raised by these witnesses. So why don't we go to those issues.

JUDGE GRAHAM: Now, may I finish my response to your statements?

THE CHAIRMAN: I've already ruled on that, Judge.

JUDGE GRAHAM: I understand.

THE CHAIRMAN: Let's move on to -- what I want to talk about is the necessity of the witnesses and any evidence that is going to be presented by you or Mr. Bostic.

JUDGE GRAHAM: Okay. Point of clarification.

THE CHAIRMAN: Go ahead.

JUDGE GRAHAM: May I respond to your statements about the Commission not having the jurisdiction so that I can preserve it?

THE CHAIRMAN: No, you may not. No, you may not. Because you have already said --

JUDGE GRAHAM: Thank you, Mr. Chairman.

THE CHAIRMAN: -- that is not an issue to be resolved.

JUDGE GRAHAM: I just want to preserve it for the record at this point so the federal courts would know it.

THE CHAIRMAN: Well, I've made my statements. Let's move on.

JUDGE GRAHAM: Thank you, Mr. Chairman.

MR. BOSTIC: Well, Mr. Chairman, in response to Judge Graham's comments -- first of all, the Chair did not tell me what affirmative defenses to strike. The four affirmative defenses mentioned by the Chair were the four affirmative defenses that I addressed in my motion. With respect to not being noticed for this motion in limine, the order that was entered by the Commission

stated that I was to make -- that he was -- that Judge Graham was to provide a witness list and an exhibit list, and

- PRETRIAL CONFERENCE PAGE 29 -

I was to make objections.

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JUDGE GRAHAM: Yes. I would make a motion to renew my -- actually, I would make a motion for a hearing -- not a rehearing but a hearing -- on my motion for a pretrial conference, and I would like to argue the merits of having a hearing on it.

THE CHAIRMAN: There's no necessity for argument. The motion is denied for a pretrial hearing at this time.

JUDGE GRAHAM: At this time, I would cite to the Commission the opinion of --

THE CHAIRMAN: Judge, is this in reference to my ruling just now?

JUDGE GRAHAM: Yes. I would like to state an objection --

THE CHAIRMAN: I will not take any further comment on that, Judge. Please proceed.

JUDGE GRAHAM: I would like to -- may I preserve my record on appeal?

THE CHAIRMAN: You can make your proffer

at a time later, when the Commission is not here. I have ruled on that. There is not going to be any further argument. Please proceed.

JUDGE GRAHAM: All right. I don't understand, because -- this is so unusual that I don't understand it. I think I am being told that I cannot establish a record on appeal by citing the case that says you must listen to my arguments.

THE CHAIRMAN: Please proceed, Judge. Do you have anything else to present to the Commission before I have opening statements made?

JUDGE GRAHAM: Yes. I would like a motion to -- for a rehearing on my second amended motion to dismiss. The basis for this is as follows --

THE CHAIRMAN: Judge, that is out of order at this time.

JUDGE GRAHAM: Excuse me, but I --

THE CHAIRMAN: It is out of order at this time, and I will not take an argument on that.

JUDGE GRAHAM: Let the record reflect that my second amended motion to dismiss has

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never been noticed or heard -- that is a speaking motion -- that the Commission did not allow me to call witnesses to prove the factual basis of the motion; and that counsel for the JQC filed a response to the motion stating that it contained false allegations; and that the appellate court, on appeal, are going to be in a quandary, because -- with issues of fact left unresolved, there is more than just a issue of law to be decided by the Commission with respect to this complicated, 58-page motion to dismiss.

THE CHAIRMAN: Judge Graham, I have ruled on that. I'll ask you to proceed, please.

JUDGE GRAHAM: I'm stating this for the record.

THE CHAIRMAN: You have stated your point. I want you to proceed. You've made your point clear. Please proceed with any other matter you want to bring before we begin opening statements.

JUDGE GRAHAM: Is it my understanding that I cannot state Robert -- Charles versus State of Florida?

THE CHAIRMAN: I have ruled on the

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matter, Judge. Please proceed.

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JUDGE GRAHAM: My objection is -- and I move for a mistrial. Mr. Bostic has alleged conduct during these proceedings. Nothing in the formal charges nor in the consolidated notice of formal charges, an amendment to

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notice of formal charges, has put me on notice or charged me with any conduct.

THE CHAIRMAN: The motion is denied. The motion for a mistrial is denied.

Please continue, Mr. Bostic.

JUDGE GRAHAM: Let the record reflect I was not allowed to finish my argument.

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JUDGE GRAHAM: I accept the ruling but would now ask to proffer my opening statement for the purposes -- excuse me. Let the record reflect that this individual, Mr. Kaney, is over there again shaking his head no. I would ask to --

THE CHAIRMAN: If you decide to proffer, you may proffer during one of the breaks or after we break tonight; but I will not have you proffer at this time.

JUDGE GRAHAM: It is unfair to make me proffer during the break or after the proceeding is over, because then my opponents are getting rested. They're able to work on their case while I'm sitting here making

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proffers to an empty room.

THE CHAIRMAN: All right. I've made --

JUDGE GRAHAM: I object to that.

THE CHAIRMAN: -- my ruling, Judge. I understand. I made my ruling. Please proceed with the presentation of your evidence.

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THE CHAIRMAN: Your request is denied.

JUDGE GRAHAM: I object. It's the equivalent of a judge asking opposing --

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THE CHAIRMAN: Judge, I am not going to take any more argument on this issue. Are you going to respond to my notice of taking judicial notice --

JUDGE GRAHAM: Yes.

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THE CHAIRMAN: I've cited to you the statute that says, "Avoid needless consumption of time," which I believe that you're doing in the cross-examination of these exhibits.

JUDGE GRAHAM: And you would not let me respond to that.

THE CHAIRMAN: I am not going to spend any more time on this issue.

JUDGE GRAHAM: You have not let me

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respond to that argument yet.

THE CHAIRMAN: You have made your objection.

Now, let's go to Mr. Bostic's motion for entrance of the exhibits that were not presented.

JUDGE GRAHAM: May I proffer the argument?

THE CHAIRMAN: No, you may not at this time, because I have Mr. Bostic's motion to offer into evidence certain exhibits.

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JUDGE GRAHAM: I would -- may I proffer the proceedings which would have proved that there have been ex parte motions heard and --

THE CHAIRMAN: Not at this time. You can proffer it at the close of the evidence today.

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JUDGE GRAHAM: Excuse me, Mr. Chairman. There has been an error.

THE CHAIRMAN: What is the error?

JUDGE GRAHAM: The error is that you asked me to wait until the end of Mr. Polak's testimony to perfect my due process arguments with respect to being -- having motions heard without notice to the respondent judge.

THE CHAIRMAN: I will allow you to proffer that at the conclusion of all proceedings. Thank you, Judge.

Mr. Bostic.

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- PRETRIAL CONFERENCE PAGE 297 -

JUDGE GRAHAM: I have certain objections that I wanted to put on the record.

THE CHAIRMAN: Well, you can -- I'm going to make my observations of what has occurred here on the evidence and on what the Motion Committee has decided they're going to do and procedures, so -- after that, I am not going to take any argument on it, and the ruling is going to stand; and you can make your objections on the record, but I'm going to leave. And, Ms. Court Reporter, if he wants to put something on the record, you certainly should take it down.

All right. The first thing is that, you know, we will proceed next Tuesday here at 9 o'clock in this courtroom to complete the proceedings, and the proceedings are designated to be completed by Friday.

Secondly, the Motion Committee has reviewed all the pleadings that are in the file, obviously, and have reviewed the motion in limine. And the motion in limine is going to be granted in part in that the Commission will not adjudicate the issue of

constitutionality of the Code of Judicial Conduct or the constitutionality of this Commission. This Commission will not adjudicate selective enforcement --

JUDGE GRAHAM: Mr. Reiter, I can't write that fast. If I could --

THE CHAIRMAN: All right. Go ahead.

JUDGE GRAHAM: Code of conduct. Also of the Commission itself --

THE CHAIRMAN: Yes.

JUDGE GRAHAM: -- or selective prosecution. Okay. Thank you, sir.

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JUDGE GRAHAM: May I respond?

THE CHAIRMAN: No, you may not. This is a non-debatable motion as far as I'm concerned. The affidavit is what we travel on. I'm going to adjourn for one minute for a vote on this, and I'll announce my vote on it. We will do it in executive session. Please step out for one second.

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JUDGE GRAHAM: I would like to make a record at this point that this is where --

THE CHAIRMAN: There is no further argument on that issue.

JUDGE GRAHAM: I'm not making argument. I would --

THE CHAIRMAN: Judge, please continue with the cross-examination.

JUDGE GRAHAM: Are you ordering me not to make a statement on the record to preserve a due process --

THE CHAIRMAN: You've made your objection. I've ruled on it. You may proceed.

JUDGE GRAHAM: Do I understand that I may not mention the federal courts?

THE CHAIRMAN: Judge, I've already ruled on it.

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MR. BOSTIC: Objection. Relevancy.

THE CHAIRMAN: Objection is sustained.

JUDGE GRAHAM: May I proffer the relevancy?

THE CHAIRMAN: Not now. You can proffer it after all of the testimony has been given. Mr. King, you will have to stand and take a proffer.

THE WITNESS: Yes, sir.

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JUDGE GRAHAM: Your Honor, if we're talking about 6 o'clock tonight -- I will not be able to continue after 6 o'clock at night. I've been going from six -- from nine in the morning to 6 o'clock yesterday constantly in hearings; I've been going constantly today from 9 o'clock. The Chair --

THE CHAIRMAN: I will have no further argument on that. I have ruled.

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THE CHAIRMAN: The Chair is going to use its discretion under 90.612 and indicate that I will not allow this questioning.

This is far afield. It does not go to the issues of credibility, and I'm going to ask you to move on, Judge.

JUDGE GRAHAM: I --

THE CHAIRMAN: You can proffer it at the close of all the evidence. Please move on.

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JUDGE GRAHAM: Yes. I would like to proffer the relevancy.

THE CHAIRMAN: Let me see the document.

JUDGE GRAHAM: And I will state for you the relevancy of not knowing --

THE CHAIRMAN: I don't need for you to proffer it right now.

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JUDGE GRAHAM: I would like to --

THE CHAIRMAN: You may proffer those documents subsequent to the testimony that's going to be presented by this witness.

JUDGE GRAHAM: I would like to respond.

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THE CHAIRMAN: No.

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JUDGE GRAHAM: Request a proffer.

THE CHAIRMAN: You will proffer at such time as we finish this witness, in the direct presentation of evidence and outside the presence of the Commission.

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THE CHAIRMAN: Objection sustained.

JUDGE GRAHAM: May I respond?

THE CHAIRMAN: You may proffer at such time as you proffer the other items.

JUDGE GRAHAM: I can't. This rule that I've got to proffer everything, the other items, after being at a hearing all day, from

9 o'clock until 5:30 with a 20-minute break, is completely unworkable. I do not have a computer for a mind. There's no way I can remember all these proffers that you're requiring me to make at the end of the day.

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THE CHAIRMAN: I have ruled on that motion. Please continue, Judge.

JUDGE GRAHAM: I'm trying to point out something for the record for appeal.

THE CHAIRMAN: Judge, I have ruled on that motion. Please continue.

JUDGE GRAHAM: I understand that. I'm not asking you to rerule on it. I'm trying to make --

THE CHAIRMAN: Well, then I do not want gratuitous remarks to the bench. Please continue your cross-examination of the witness.

JUDGE GRAHAM: I'm trying to point out the prejudice, Mr. Chairman, which will be unavailable to the appellate courts now, because you won't let me do it.

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THE CHAIRMAN: Excuse me, Judge. Are you asking a question or are you --

JUDGE GRAHAM: I am proffering what this would show; not just bias and credibility --

THE CHAIRMAN: I will have no further argument on it, Judge. Please continue your cross-examination.

JUDGE GRAHAM: It's my understanding the Chair doesn't want to hear testimony to prove the workings of the attorneys and the newspapers toward my problems. Is that the understanding I have? I am not allowed --

THE CHAIRMAN: The Chair will not comment to that. I am not under direct or

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cross-examination. The Chair requests you to perform your function, to do your cross-examination, and to comply with the rules of properly presenting evidence and making proper objections.

JUDGE GRAHAM: Can I just state --

THE CHAIRMAN: I will request that you continue your cross-examination and do not debate with the Chair.

JUDGE GRAHAM: I will not debate. May I state which affirmative defense it applies to?

THE CHAIRMAN: No. Please continue.

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JUDGE GRAHAM: I would object on the basis of due process of law that --

THE CHAIRMAN: I have ruled on it --

JUDGE GRAHAM: I understand.

THE CHAIRMAN: -- and if you want to do anything on the record, you can do it after we finish with the witness.

JUDGE GRAHAM: Your Honor, I object to that. You are making it completely impossible for me to perfect my record on

appeal. There is no way I'm going to remember this myriad of objections and proffers after --

THE CHAIRMAN: Are you finished asking questions, Judge?

JUDGE GRAHAM: No, I have not. I will need to take a moment to make a note of this.

THE CHAIRMAN: All right. I'm going to give you one minute. . . .

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JUDGE GRAHAM: May I proffer its importance?

THE CHAIRMAN: You can proffer it later on.

JUDGE GRAHAM: I'll need to make a note.

THE CHAIRMAN: Judge, please proceed, because the witness will stand down. I am not going to be delayed any further with you walking around --

JUDGE GRAHAM: I just need --

THE CHAIRMAN: -- and writing things down.

JUDGE GRAHAM: You're making this huge list of things that I have to proffer at the end of the case, and I do not have --

THE CHAIRMAN: You have two people sitting back there. Why don't you have them assist you? I thought --

JUDGE GRAHAM: That's exactly what I was doing, Mr. Chairman.

THE CHAIRMAN: Well, why don't you give them a pen and let them write it down, please.

Judge, I am not going to wait for you to write now.

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JUDGE GRAHAM: May I proffer?

THE CHAIRMAN: No. You can proffer at a later time when the testimony is completed.

JUDGE GRAHAM: May I stop to make a note of the proffer so that I --

THE CHAIRMAN: No. You must continue, please.

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But when I try to show the horrible things that these people do, I would hope you would think mitigation. Okay?

THE CHAIRMAN: Judge, I have to now stop the proceedings. I just cannot keep this court reporter going or the court -- Madame Clerk, who I've had here since 9 o'clock; and the bailiffs are ready to go, too. And frankly, I've got to drive back to Ocala, so I am going to end the proffer at this time and ask that everybody be back here at 9 o'clock.

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JUDGE GRAHAM: May I ask permission to finish my federal due process objection?

THE CHAIRMAN: I have ruled on that. You are pushing me, Judge Graham, and I am getting ready to hold you in contempt, and I'm not going to warn you again. And if that's the case, I'm going to recommend incarceration for your activities of disdain for this Chair, and it is not going to happen anymore. You will orderly proceed with the cross-examination of this witness. Now, please proceed.

JUDGE GRAHAM: May I ask --

THE CHAIRMAN: Do not argue with me. Please proceed.

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JUDGE GRAHAM: May I proffer a statement for the record?

THE CHAIRMAN: At a later time. Please continue with your cross-examination of the witness.

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BY JUDGE GRAHAM:

Q You stated that --

JUDGE GRAHAM: May I make a due process objection, Your Honor -- excuse me -- Mr. Chairman?

THE CHAIRMAN: No. Not at this time. You may make an argument at a subsequent time.

I'm getting ready to dismiss this witness, Judge Graham. Are you finished?

JUDGE GRAHAM: I was just making a note so I would be able to make my proffer.

THE CHAIRMAN: I am now finding you once again in contempt of this Commission.

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MR. BOSTIC: Objection. Relevancy. Beyond the scope.

THE CHAIRMAN: Sustained. You may proffer at a later time.

Apparently there are no further questions of the witness.

JUDGE GRAHAM: I have further questions.

THE CHAIRMAN: Well, you have stopped, and you're writing. Do you have further questions?

JUDGE GRAHAM: Yes, I do. I need permission to write down the proffer that has been delayed so that I won't forget it.

THE CHAIRMAN: I'm not going to delay the trial.

JUDGE GRAHAM: Will you not allow me --

THE CHAIRMAN: If you have any other questions of the witness, ask him now.

JUDGE GRAHAM: Permission to make as short a note as possible?

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THE CHAIRMAN: No. I am not delaying this trial. Do you have any other questions?

JUDGE GRAHAM: Yes, I do.

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JUDGE GRAHAM: May I proffer what I would have --

THE CHAIRMAN: No. You may proffer at a later time, as I've ruled on the other matters.

Apparently you're finished asking questions.

JUDGE GRAHAM: No, I am not.

THE CHAIRMAN: Well, if you continue to delay the trial, I'm going to have the witness stand down. Please continue, Judge.

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JUDGE GRAHAM: May I proffer the --

THE CHAIRMAN: You may proffer all those questions at a later time, as I've previously ruled.

JUDGE GRAHAM: May I have time to make a note about it?

THE CHAIRMAN: Please continue.

JUDGE GRAHAM: Is that a yes or no?

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THE CHAIRMAN: You have two assistants there. Let them make your notes, please. Are they not capable of helping you?

JUDGE GRAHAM: They are not capable of this type of legal notation.

THE CHAIRMAN: Make your note.

Judge Graham, we're way past the note. You're writing a book there. What are you --

JUDGE GRAHAM: I'll let you read it, Mr. Chairman.

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THE CHAIRMAN: The objection is sustained.

JUDGE GRAHAM: May I proffer a response?

THE CHAIRMAN: At a later time, Judge.

JUDGE GRAHAM: Permission to just state federal due process on the record?

THE CHAIRMAN: You may do it later on, Judge.

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JUDGE GRAHAM: May I proffer it at the end?

THE CHAIRMAN: Judge, you do not have to ask for a proffer. You may do it at the end of the day.

JUDGE GRAHAM: May I have permission to make a short note?

THE CHAIRMAN: No. You have permission to continue on asking questions.

JUDGE GRAHAM: May I state federal due process as an objection?

THE CHAIRMAN: You may do that at such time as the cross-examination is completed.

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MR. BOSTIC: Objection. Hearsay.

THE CHAIRMAN: Sustained.

JUDGE GRAHAM: May I respond?

THE CHAIRMAN: No.

JUDGE GRAHAM: May I proffer?

THE CHAIRMAN: At a later time, after you finish cross-examining.

JUDGE GRAHAM: May I express a federal due process objection?

THE CHAIRMAN: At a later time.

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JUDGE GRAHAM: May I make a note of it so that I can remember it?

THE CHAIRMAN: No. Please proceed.

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JUDGE GRAHAM: May I proffer an objection?

THE CHAIRMAN: You may proffer it at a later time. And from now on, when I make -- sustain an objection, if you want to make a proffer, then make it at the end of the

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presentation of the evidence on cross-examination so as not to delay this trial any further. Please continue.

JUDGE GRAHAM: May I request permission to make a short note so that I will not forget it?

THE CHAIRMAN: Please continue, Judge.

JUDGE GRAHAM: May I make --

THE CHAIRMAN: No. I suggest you move on, because this witness is getting ready to stand down.

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THE CHAIRMAN: The objection is sustained.

JUDGE GRAHAM: Request permission to argue it.

THE CHAIRMAN: Denied.

JUDGE GRAHAM: Request permission to make a short note so that I will not forget to proffer it.

THE CHAIRMAN: Please continue, Judge. I'm not going to delay this trial anymore.

JUDGE GRAHAM: Is that a no?

THE CHAIRMAN: I'm telling you: If you have no further questions, the witness is going to stand down.

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JUDGE GRAHAM: May I proffer the answer for the record?

THE CHAIRMAN: At a later time.

JUDGE GRAHAM: It will be gone. Am I going to have him answer the question on the

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proffer? Because that's the type of proffer I need.

THE CHAIRMAN: You can make the proffer when you have completed cross-examination.

JUDGE GRAHAM: I can't proffer the answer.

THE CHAIRMAN: You are arguing with me again. I have ruled.

JUDGE GRAHAM: Excuse me, Mr. Chairman.

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JUDGE GRAHAM: These are the notes I was taking. Item three here, where I wrote "Need" -- and I started to write the rest of the legal argument that I needed to make, and you cut me off. You would not let me do it.

And this is after telling me -- after charging me with contempt and telling me you were going to ask to put me in jail, you told me that. You said, "I'm charging you with

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contempt. I'm going to ask them to put you in jail." And after telling me that, you wouldn't even let me make a note of a proffer that you wouldn't let me make in the hearing. And now I don't know what it is. I honestly don't know what it is.

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JUDGE GRAHAM: I object, Mr. Chairman, to your ruling on the basis of -- may I state it for the record?

THE CHAIRMAN: Your objection is noted.

JUDGE GRAHAM: May I state the reasons for --

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THE CHAIRMAN: No, because I'm allowing this court reporter to go to lunch.

JUDGE GRAHAM: May I proffer the objection?

THE CHAIRMAN: When the court reporter comes back from lunch. Thank you, Mr. McDermott.

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JUDGE GRAHAM: Can I just proffer it now and you can make your ruling, or do you want me to go back and --

THE CHAIRMAN: No. If you have to proffer the witness, do it after the questions.

JUDGE GRAHAM: Oh, at the end?

THE CHAIRMAN: Yes.

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JUDGE GRAHAM: May I proffer?

THE CHAIRMAN: No. Judge, I'm going to sustain the objection and ask you to ask the question with a little more information, please.

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MR. BOSTIC: Charles Dean.

JUDGE GRAHAM: Mr. Chairman, may I proffer the objection of not being allowed my final recross before we start this? It's just a short objection.

THE CHAIRMAN: Not now. You can do it after close, because I have the witness coming forward.

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JUDGE GRAHAM: We had a proffer -- we had some proffers that I was supposed to keep until the end of the proceedings.

THE CHAIRMAN: Please make those proffers.

JUDGE GRAHAM: I can't remember them.

THE CHAIRMAN: I will allow you to make the proffers tomorrow, if you want to take the time to remember them.

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JUDGE GRAHAM: Permission to proffer an objection?

THE CHAIRMAN: No. Not at this time.

JUDGE GRAHAM: A point of clarification. When might I proffer it?

THE CHAIRMAN: We'll proffer it at -- I'll talk to you about it later on.

What I want to go into now is some other -- is there anything else, Mr. King?

MR. KING: No, sir.

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JUDGE GRAHAM: May I voice an objection to that procedure?

THE CHAIRMAN: No. Not now. Let me finish.

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JUDGE GRAHAM: May I argue the relevancy?

THE CHAIRMAN: No.

JUDGE GRAHAM: May I approach the bench?

THE CHAIRMAN: On what matter, Judge? Is it a proffer? Why is there a necessity for a sidebar?

JUDGE GRAHAM: If you would allow me to explain this, Mr. Chairman, I --

THE CHAIRMAN: No. If you're going to argue on what I've previously ruled -- I'm not going to take any argument or any proffer. Please continue.

JUDGE GRAHAM: Thank you, Mr. Chairman. . . .

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JUDGE GRAHAM: Could I just proffer his answer since he's here?

THE CHAIRMAN: No. As I told you, we're going to follow a certain procedure on that.

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JUDGE GRAHAM: Can he proffer the --

THE CHAIRMAN: Sustained.

JUDGE GRAHAM: Can he proffer the answer so that the appellate courts will know --

THE CHAIRMAN: I cannot go outside the prior rulings. I'm going to stay consistent with them, and it will have to be proffered at a later time.

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JUDGE GRAHAM: I would also like to renew my objection to the fact that the Commission has not allowed me to proffer the evidence which has been ruled inadmissible. The purpose of proffers is not only to assist our appellate courts in their record of -- in preparing a record on appeal, but I am sure the appellate courts require that our trial courts listen to the proffers so that they can make the appropriate decisions.

And I believe that it is yet another example of the prejudgment of my case that the Chair and the Motion Committee and the Commission as a whole has made rulings on these matters of very essential evidence without ever having listened to the proffers of that evidence.

THE CHAIRMAN: The Commission's ruling will stand as made previously.

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JUDGE GRAHAM: May I make a note for the proffer?

THE CHAIRMAN: You can proffer that at later time.

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JUDGE GRAHAM: I would ask permission to note for the record at this time that this is one of the procedural --

THE CHAIRMAN: You do not have to make that note for the record. You have done it several times. My objection stands and -- let's move on, Judge.

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MR. BOSTIC: Objection. Speculation.

THE CHAIRMAN: Well, I'm going to sustain the objection on opinion testimony.

JUDGE GRAHAM: And I would just state for the record that --

THE CHAIRMAN: You don't need to state anything. I've ruled. Please ask your questions.

JUDGE GRAHAM: Can I cite the rule of evidence?

THE CHAIRMAN: No. You may move on, please.

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. . . And I would like to reproffer the question.

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THE CHAIRMAN: No. I'm not going to allow that. Please continue, Judge.

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JUDGE GRAHAM: At this time I would like to proffer at least one of the two-hour videotapes for the Commission's viewing of what Citrus County Court is really like.

THE CHAIRMAN: I've ruled on that, and

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we're not going to allow that in.

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JUDGE GRAHAM: Permission to preserve my federal due process objection on the basis --

THE CHAIRMAN: You've done that in the past, and there's no need for further argument.

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MR. BOSTIC: Objection. Relevancy.

THE CHAIRMAN: Sustained.

JUDGE GRAHAM: The relevancy is -- this

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is what these --

THE CHAIRMAN: Sustained. I did not ask for argument.

JUDGE GRAHAM: May I proffer the argument?

THE CHAIRMAN: Not now. Are you finished, Judge?

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JUDGE GRAHAM: I want to proffer into evidence all my remaining evidence that wasn't

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allowed.

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JUDGE GRAHAM: Well, see, here's the trouble with that ruling. Okay? All right? That -- the idea that you don't need to proffer it because -- if the Florida Supreme Court rules that you don't have jurisdiction to hear

affirmative defenses -- which I, quite frankly, find hard to believe they're going to rule that way -- but the assumption that, "Well, if they rule against me on the affirmative defenses, then I don't need to proffer" ignores the fact that -- as I had stated throughout the proceedings, that I fully intend to take this issue to the United States Supreme Court. And the United States Supreme Court has a right to hear what these witnesses would have actually said in determining whether or not these things should have been also accepted in the proffer.

And there's another thing that the Commission, I believe, is overlooking on this. Okay? Proffers are not meant just to allow the appellate courts to determine whether or not the evidence which would have been allowed in was relevant. The proffers are supposed to have been made and accepted by the trial court in an effort for them to make a fair determination based on the actual substance of the evidence -- or testimony -- which was sought to be given.

And, you know, for the trial-level judge, so to speak, the Chairman of the Commission, to

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say, "Well, I don't want to hear the proffer. You can proffer it for the purpose of appellate reasons, but you can't proffer it to me to decide whether or not it's relevant or not," pre -- you know, evinces a certain prejudice against the person who wants to proffer the evidence.

Mr. Chairman, with all due respect and with all sincerity, I believe if you would have allowed me to proffer these things to you, that many of them you would have said, "Oh, well, now I see the relevancy of that." And I think it's a mistake and I think it's error for the Commission to take the position, "Well, I don't have to hear it. I don't want you to proffer it to me. Just proffer it for the record for the appellate court."

And, of course, I know you've ruled against me, but I want to be clear on the record why I think that's an error.

THE CHAIRMAN: I understand that.

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And I would very much like to put Judge Edwards on to -- you know, I want to tie him down to the fact that he called me up and asked me to let one of his friends off of jury duty. I want to tie down the fact that his secretary did the same thing. I want to tie down the fact that he threatened one of my 15-year-old clients with 60 days in jail to get even with me for, you know --

THE CHAIRMAN: Did you say your client? When you were practicing law?

JUDGE GRAHAM: Yes. That's sort of in. I think I got a newspaper article in that was allowed in, and I may be able to argue that.

But I wanted to get him -- I want to proffer his -- I want to get him back on the witness stand and go through each and every one of the questions I did on the deposition. Now, he refused to answer most of those questions

based on relevancy; and, of course, on a proffer he would not be allowed to refuse to answer those questions on the basis of relevancy. And I just -- I want to get out all the misconduct of Judge Edwards clearly on the record in order to preserve my

selective- prosecution argument to the United States Supreme Court.

THE CHAIRMAN: All right.

JUDGE GRAHAM: Will I be allowed to do that?

THE CHAIRMAN: Well, what I'm going to allow to you do, Judge -- and first I'm going to -- first I'm going to give you the option to do it in writing -- in fact, I'm not going to give you the option. I'm going to have you do it in writing.

And what I want you to do, Judge -- on those witnesses that you want to proffer in the testimony -- like this is the first time I heard what you would be seeking from Judge Edwards. I want you to file a document saying, "These are the following witnesses, who I anticipate would say" A, B, or C. All right? And I know you're going to say that's a lot of

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work for you.

JUDGE GRAHAM: No. It's not a lot of work. I'll tell you what the problem with that is. Okay?

THE CHAIRMAN: Well, you haven't even let me finish.

JUDGE GRAHAM: Okay. I'm sorry.

THE CHAIRMAN: Once you do that and you file that document as your tendered proffer, I will review the proffer, and I will enter an order as to what -- I mean who -- if any, of the witnesses that we would take live testimony from. And I want you to do that within a short period of time -- a relatively reasonable period of time, because I -- you know, I want to resolve this issue as soon as we can. And I'm wondering if you could do that by next Monday or Tuesday.

JUDGE GRAHAM: Well, here is the -- may I respond?

THE CHAIRMAN: Sure. Go ahead.

JUDGE GRAHAM: Now, here is the problem with that.

THE CHAIRMAN: There is no problem, because I haven't excluded anything. What I'm

trying to do is find out what you want to proffer --

JUDGE GRAHAM: I understand.

THE CHAIRMAN: -- and the general area.

JUDGE GRAHAM: Right. I want to -- just the general area?

THE CHAIRMAN: No. I want you to go into --

JUDGE GRAHAM: Specifics.

THE CHAIRMAN: Well, not great specifics, but if you're going to say that "I expect it would be in this general area and that it" -- you know --

JUDGE GRAHAM: Well, with Judge Edwards, I would say that I expect to go into all of his misconduct. That's what I would go into.

THE CHAIRMAN: Right. But you see, Judge, I've already -- the Commission has already ruled that that particular issue is something that we're not going to address, because that selective-enforcement issue -- the Commission has taken the position that it is not an affirmative defense.

Now, you say you won't have a record to take to whatever appellate court you may want

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to go through, either the state or the federal court, and all I can say to you is: If the Commission is in error, then they will give us the direction to do the right thing, I would presume.

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JUDGE GRAHAM: But, you know, to tell him, "Okay. Now, you have this objection and this proffer and this argument -- this legal argument -- that you want to make. Well, wait until the end of the trial and make it," and meanwhile you have to try and take a note, and

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evidence is continuing to be taken by other witnesses -- it's an insufferable condition to say, "Tell me five hours from now what your proffered argument is."

And there are many arguments that I felt were sound and valid that I was unable to make, because you wouldn't -- the Commission would not take the time to hear my proffers at the time that I wanted to make them. And I would just like to preserve that objection on the record at this time.

THE CHAIRMAN: All right.

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DOCUMENT 7

Excerpts from the Record Showing the Physical Effect of the Trial Pace on Petitioner

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THE CHAIRMAN: All right. Judge Graham, you had asked time to get something to eat. How much time -- I don't want to give an hour. Would 25, 30 minutes suffice?

JUDGE GRAHAM: In 25 or 30 minutes I couldn't even get up to McDonald's and back.

THE CHAIRMAN: Judge, there's restaurants right across the street.

JUDGE GRAHAM: I couldn't walk to the townhouse and back in 20 minutes. I need an hour's lunch just like any other individual.

THE CHAIRMAN: I will not give you an hour. I will give --

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JUDGE GRAHAM: Your Honor, if we're talking about 6 o'clock tonight -- I will not be able to continue after 6 o'clock at night. I've been going from six -- from nine in the morning to 6

o'clock yesterday constantly in hearings; I've been going constantly today from 9 o'clock. The Chair --

THE CHAIRMAN: I will have no further argument on that. I have ruled.

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JUDGE GRAHAM: I can't. This rule that I've got to proffer everything, the other items, after being at a hearing all day, from 9 o'clock until 5:30 with a 20-minute break, is completely unworkable. I do not have a computer for a mind. There's no way I can remember all these proffers that you're requiring me to make at the end of the day.

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JUDGE GRAHAM: I'm becoming physically incapable of standing up to this, Mr. Chairman.

THE CHAIRMAN: Well, then sit --

JUDGE GRAHAM: At some point you've got to recognize that the due process problems --

THE CHAIRMAN: You may sit down, please, if you want to.

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cross-examination. Can we close the door, please? Please continue your cross-examination.

JUDGE GRAHAM: Mr. Chairman, after being in hearing from nine to six yesterday, from nine until 6:30 today, with the Chair only allowing me a 20-minute break, I am so exhausted right now that I cannot properly defend myself in these proceedings and would request that the Commission adjourn until tomorrow.

THE CHAIRMAN: No. I'm going to finish this witness. Judge, you had ample time to get ready, you had breaks during the lunch hour to do whatever you did, and we are going to continue. The Commission has driven from Ocala to be here. I was here at 8:15 waiting for you to appear as I requested. You did not show on the evidentiary stuff, so I will take no further argument. We will complete this witness. Please continue.

JUDGE GRAHAM: Mr. Chairman, I didn't say I wasn't prepared. I said I'm too exhausted to continue.

THE CHAIRMAN: Please continue. You

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haven't even --

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JUDGE GRAHAM: I'd inform the Commission I'm too exhausted to continue at this point.

THE CHAIRMAN: All right. That ends the cross-examination. Any redirect?

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JUDGE GRAHAM: Second of all, I have been in hearing nine hours yesterday, ten hours today with but a 20-minute break, including --

THE CHAIRMAN: You have not been on a 20-minute break. You've been on other breaks here. Do not mislead the Court or the record.

JUDGE GRAHAM: That is --

THE CHAIRMAN: I'm not going to argue with you anymore. The Commissioners may stand down.

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JUDGE GRAHAM: See, after ten hours -- I apologize. I apologize not only to the Chairman, but I apologize to the public for standing here and being at a point where I can only half stutter my questions. . . .

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JUDGE GRAHAM: Excuse me. I do have other evidence that -- if I had had it -- if I hadn't been so exhausted and had been given some time to look through my files, I would have had other cross-examination, specifically with respect to this individual's

involvement in filing a complaint against Charles Horn, the individual that ran against me in the last election. . . .

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JUDGE GRAHAM: This procedure, where the Commission has kept me nine and ten and a half

- PAGE 688 -

hours at a time, with like a 20-minute break yesterday, has resulted in these files getting ever more disorganized.

* * *

DOCUMENT 8

Affidavits Related to JQC Misconduct

Note: This document is a composite of the affidavits filed by the Petitioner and seven citizens of Citrus County who personally witnessed the JQC proceedings. They were filed in open court at page 408 of the official transcripts (A-699) in support of the Petitioner's motion to disqualify seven members of the JQC.

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

AFFIDAVIT

STATE OF FLORIDA:

COUNTY OF CITRUS:

Comes now the Honorable Gary G. Graham, Citrus county Court Judge, Respondent Judge in the above-styled cause, who does swear and affirm that the following is true:

That the following talked tome at the beginning of the proceedings on January 27, 1993, in the above-styled cause. They are:

Joe Body

Chris Litras

Helen Zelby

George Lizanetz

Alex Ilnyckyj

They have told me that they observed the following during the proceedings of January 26, 1993:

1. That Stanley G. Tate was reading a newspaper during the proceedings.

2. That Miette Burnstein and Nancy Mahon were talking and giggling for extended periods of time.

3. That William C. Clark was reading a newspaper during the proceedings and appeared to be sleeping at one

point.

4. Commissioner Burnstein was reading comics in the newspaper.

5. Mr. Kamney was making nonverbal gestures at Chairman Reiter.

6. That Sybil Barnes appeared to be sleeping during the proceedings.

Furthermore, Mrs. Bodi advised me that today Mr. Clark was appearing to be sleeping as early as 9:30 a.m. today.

Finally, these individuals were ready, willing and able to testify before the Commission about these matters and Chairman Reiter refused to let them.

Based on the foregoing, Respondent Judge fears that these individuals are biased against him and that he will not receive a fair hearing.

WHEREFORE, Respondent Judge requests that Commissioners Barnes, Kaney, tate, Burnstein, Mahon, Clark, and Reiter be disqualified.

/s/ Gary G. Graham
HONORABLE GARY G. GRAHAM

Sworn to and subscribed before me this 27th day of January, 1993.

/s/ Notary Public
Notary Public

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE

_____/

AFFIDAVIT

Comes now Alex Ilnyckyj and does swear and affirm that the following is true:

That I have read the Affidavit of Judge Graham with respect to the disqualification of Commissioners Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ Alex Ilnyckyj
Alex Ilnyckyj

Sworn to and subscribed before me this 27th day of January, 1993.

/s/ Notary Public
Notary Public

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

AFFIDAVIT

Comes now Joe Body and does swear and affirm that the following is true:

That I have read the Affidavit of Judge Graham with respect to the disqualification of Commissioners Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ Joe Body
Joe Body

Sworn to and subscribed before me this 27th day of January, 1993.

/s/ Notary Public
Notary Public

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE

_____/

AFFIDAVIT

Comes now Chris Litras and does swear and affirm that the following is true:

That i have read the Affidavit of Judge Graham with respect to the disqualification of Commissioner Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ Chris Litras
Chris Litras

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

AFFIDAVIT

Comes now Helen Zelby and does swear and affirm that the following is true:

That I have read the Affidavit of Judge Graham with respect to the disqualification of Commissioners Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ Helen Zelby
Helen Zelby

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

AFFIDAVIT

Comes now George Lizanetz and does swear and affirm that the following is true:

That I have read the Affidavit of Judge Graham with respect to the disqualification of Commissioners Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ George Lizanetz
George Lizanetz

Sworn to and subscribed before me this 27th day of January, 1993.

/s/ Notary Public
Notary Public

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
J U D G E , N O . 9 1 - 4 1 5
SUPREME COURT NO. 80,273
HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

AFFIDAVIT

Comes now Daniel R. Mason and does swear and affirm that the following is true:

That I have read the Affidavit of Judge Graham with respect to the disqualification of Commissioners Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ Daniel R. Mason
Daniel R. Mason

Sworn to and subscribed before me this 27th day of January, 1993.

/s/ Notary Public
Notary Public

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415

SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

AFFIDAVIT

Comes now Marie L. Mason and does swear and affirm that the following is true:

That I have read the Affidavit of Judge Graham with respect to the disqualification of Commissioners Barnes, Kaney, Tate, Burnstein, Mahon, Clark, and Reiter, and that I was witness to part or all of the observations he relates therein.

/s/ Marie L. Mason
Marie L. Mason

Sworn to and subscribed before me this 27th day of January, 1993.

/s/ Notary Public
Notary Public

DOCUMENT 9

Excerpt from the Record Supporting Reasons for Selective Prosecution

- PRETRIAL CONFERENCE PAGE 43 -

My affirmative -- let's -- my defense is simple. When you have a county judge, an elected public official, who has stepped on the toes of a bunch of entrenched politicians by cleaning up the county court and who has 24,000 cases in six years -- anybody, any Commission, could go through with a microscopic examination of those 24,000 and come up with 25 examples like this. They could do that to any judge that was unpopular. They could do it to any judge who ran the courts for the people of the State of Florida and not for the attorneys and the newspapers and the other judges. Any judge, 24,000 cases, you could find examples as trivial as saying, "Sir, you're on DUI probation. You're going to need transportation, so get a bicycle."

So what has happened? I haven't gone

- PRETRIAL CONFERENCE PAGE 44 -

along to get along. I have stood up for the principles that I promised the people of this county. And because the attorneys, the newspapers, and the other politicians are unhappy with me, they have brought these charges, and they have brought here to the Commission's attention my gravest error: exercising my free

speech as a judge -- to say what? To say that some attorneys were misbehaving in court. To criticize some other judges fairly and accurately and truly. Everything I've ever said has been the truth. And now --

THE CHAIRMAN: Judge, I would like you to get to the issue of 100 judges, though. I understand what you're saying. What I want to know --

JUDGE GRAHAM: I'm getting there.

THE CHAIRMAN: -- is the number.

JUDGE GRAHAM: Mr. Reiter, I'm getting there.

So now we have a Commission of attorneys and judges and influential people deciding whether I'm right or wrong under a code --

MR. BOSTIC: Mr. Chairman --

- PRETRIAL CONFERENCE PAGE 45 -

JUDGE GRAHAM: -- that is so vague.

MR. BOSTIC: -- he is simply arguing the motion to dismiss.

THE CHAIRMAN: I note your objection. Judge Graham, will you please just go to the issues about the --

JUDGE GRAHAM: I'm there.

THE CHAIRMAN: Okay.

JUDGE GRAHAM: It is so vague that you folks could do this to any good judge if his politics -- if you don't mind me using a colloquialism -- ain't right.

* * *

- PRETRIAL CONFERENCE PAGE 75 -

As long as a judge keeps -- minds his Ps and Qs with the attorneys and the newspapers, he doesn't have to worry -- unless he goes out and does something really, you know, serious, like stealing, taking bribes. One judge was accused of attempting to kill a confidential informant. Sure. Those are the things that are properly within the constitutional purview of this Commission. But when you go out picking on little old judges like me for telling the truth and being uppity enough to complain about misconduct in the judicial system, at least you've got to give him an opportunity to prove it's true.

* * *

PRETRIAL CONFERENCE PAGE 187 -

JUDGE GRAHAM: 12, 13, and 14 are not being offered to prove the truth or accuracy of the matters stated therein. They are

offered to prove that Mr. King was upset with me for exercising my rights to challenge his -- to challenge his conduct in the federal courts, and it also shows that Commissioner Frank was interested in my proceedings in the federal courts.

And I hope to argue to the United States Supreme Court that this Commission seems to get especially sensitive about judges who turn to the federal courts for protection and that this is one of the reasons I'm being selectively prosecuted.

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* * *

THE CHAIRMAN: All right. This Commission is going to stand in recess. I request, Judge, that you stay right where you are. We are bringing in a circuit court judge appointed by the Supreme Court to show grounds why you should not be held in contempt of the Circuit Court.

And if you'll stay right there -- and, Mr. Bostic, what I'm going to ask you to do is to proffer the questions while the -- Circuit Judge Yawn, a retired judge appointed by the Supreme

Court for the sole purpose of ruling on issues of contempt in this matter -- he is waiting to come in here.

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The Commission will stand down, I will stand down, and he will come in here. And I want you just to wait until he gets here.

JUDGE GRAHAM: I would like to request information.

THE CHAIRMAN: Don't -- Judge, I --

JUDGE GRAHAM: Excuse me.

THE CHAIRMAN: Judge --

JUDGE GRAHAM: I'm making an objection as an attorney -- not as an attorney, but as a litigant representing myself, I would like to voice an objection that somehow or other this has already been prearranged that a circuit court judge is here, on the spot --

THE CHAIRMAN: That's right, Judge.

JUDGE GRAHAM: -- and I knew nothing about this. I would like to know how this got arranged and if Mr. Bostic had anything to do with it.

THE CHAIRMAN: Mr. Bostic had nothing to do with it, Judge. This is by practice of the Commission. All right?

* * *

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* * *

Q And what documents did he ask you for?

THE CHAIRMAN: The Chair does not understand the purpose of this questioning. It is not relevant.

JUDGE GRAHAM: I will proffer it.

THE CHAIRMAN: You can proffer it after. Unless you can tell me how it's relevant to the issues of this case -- please indicate now.

JUDGE GRAHAM: Because Judge -- Commissioner Frank asked for a copy of my federal pleadings, and it's going to be one of my arguments that this Commission got miffed because I went to the federal courts for protection against the false accusation of this

- PAGE 571 -

individual that I had violated a law; and that it was the subject matter of a pending JQC proceeding; and that this is part of the selective prosecution of my case.

It is also to go to my affirmative defenses that this entire procedure, where investigators request federal pleadings as if

they're some type of evidence of guilt of judicial misconduct -- are requested by Commission members from complainants. The Commission had no business whatsoever asking for a copy of that federal complaint --

THE CHAIRMAN: All right. The --

JUDGE GRAHAM: -- and it could do nothing but poison their mind if they thought that was evidence of judicial misconduct.

* * *

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* * *

MS. SCHUMACHER: Judge, could I see that?

JUDGE GRAHAM: Certainly.

MS. SCHUMACHER: Thanks.

This -- I would have shown through the examination of Mr. King that Judge Frank called him on the 20th of June, 1991. And evidently, from this -- and that's what I hope to establish through his testimony -- that he wanted the pleading in the federal lawsuit. And I hope -- you know, I believe that this case is destined for some type of resolution in the federal appeals courts. I really do. I hope so, because we cannot have an independent judiciary and a

judiciary of integrity when we have a Commission that goes around getting its nose bent over the fact that judges are filing

- PAGE 669 -

federal lawsuits and winning them with respect to judicial conduct and judicial ethics.

And I hope to show and establish that the Commission was exposed to this fact by the disgruntled litigants and my political opponents who were unhappy with the fact that the Commission had not done anything, and they said, "Look at this. Now, he's going to the federal courts to cut you off."

And I want to -- this was evidence of the selective prosecution of this Commission that it would select me out because I had gone to the federal courts for relief. In other words, now they're going to show me this is what happens if you go to the federal courts for help.

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MR. FRANKLIN: Go ahead. You're on the air.

MR. MARTIN: One of the things I've noticed -- I've been in Citrus County approximately -- going on five years now, and I started to attend Commissioners' meetings, and the next day I'd read the paper. Now, people came to that podium, and they had very valid things to bring out to that Commission. If it was critical to the Commissioners, the newspapers protected them.

The newspapers of Citrus County -- mainly the Chronicle -- wants to play ball with the politicians. If the politician plays ball with them and if Judge Graham would play ball with the Chronicle, everything would be hunky-dory. The Chronicle wants to run the politics of Citrus County; and if they can't do it, they're going to character assassinate you. And that's my question and -- I have no questions of you actually, Judge. You're doing a good job. My name is John Martin, by the way.

JUDGE GRAHAM: Nice to hear from you.

MR. FRANKLIN: Thank you very much.

MR. MARTIN: Bye-bye.

JUDGE GRAHAM: Mr. Martin, if the question is do I agree with that, you are -- you hit the nail right on the head. That's what I say.

You know, the thing about newspaper editors -- they don't want to go out -- they're not doers. They don't want to go out and do anything. Have you ever noticed that?

How many newspaper editors have you ever seen that qualify for public office? If they don't think these people are doing such a good job, why don't you ever see a newspaper editor put their reputation, their money, their effort on the line and try to do something? All they want to do is hide behind that typewriter, criticize, insult, ridicule others.

And you know what? They're very used to having their way with public officials, because most public officials are terrified of the newspapers, because they make them or break them.

And the thing that irks the newspapers in this county so much is that I don't care what they think about me. I tell them I don't care

what they think about me. And when they try to put pressure on me with their editorials, I completely ignore them, and they know it. They complained about me putting the guy in jail for ten days for cussing. They write up an editorial saying that I'm unfit and that the people ought to throw me out of office. And then, two weeks later, when somebody with a worse record comes in and says a worse word, I'll put them in jail for 20 days, and it infuriates them.

That's -- to them -- it's a personal thing with them, a power thing. They are used to shoving around public officials with their opinions, and I won't let them.

And the reason is simple. And, you know, I hope this doesn't sound self-serving, but it's the truth. A famous man once said the difference between a politician and a leader is that a politician thinks about the next election and a leader thinks about the next generation. Okay?

I am not a politician. I think about the next election. Okay? I think about it. I would like to win the next election, but I will

not do anything I think is wrong even if I think it will cause me to lose the next election. And that's what people want nowadays.

And the ironic thing is that when the people get somebody like that, the newspapers can't stand them, and then they'll write editorials about "Why don't we have leaders in office anymore?" The reason we don't have leaders in office anymore is because true leaders don't make their every decision with their ear and their eye to the newspapers. And when you get a true leader, the newspapers can't stand them.

EXCERPTS FROM PETITIONER'S
SHOW CAUSE RESPONSE

* * *

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> Woven throughout the fabric of these proceedings is a disturbing question: Under what conditions may the elective process be nullified by the discipline or removal of elected judicial officials? The question is a disturbing one because in a democratic society the people's elected officials should not be disturbed in their tenure except in instances of great aggravation.

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> In Re Kelly, 238 So.2d 565, 574 (Fla. 1970) (dissenting opinion).

These words spoken by Justice Ervin some 23 years ago come back now to haunt the court. During the last quarter of a century the Commission has become ever more powerful in the execution of its duties. Another regrettable inquiry is now before the court that probably ought never to have been pursued.

It was pursued because the Commission, like Chief Judge Swigert, believed the "Horror Stories" about Judge Graham reported by the newspapers and his political opponents and did not bother to talk to him before jumping to the conclusion that what they heard was true.

If like Ms. Willis they had listened to the other side of the story before filing formal charges, they would not have been filed.

But instead they told Judge Graham they would listen to him for only five minutes per charge, an impossible time limit to accomplish the complicated explanations involved in this case.

So Judge Graham said let's go to trial and he told the public what was going on. That made the Commission angry. Bad judges are supposed to buckle at the knees before the mighty power of the Florida Judicial Qualifications Commission. Furthermore, Judge Graham in exercising his right to free speech explained to the public that he intended

- PAGE 430 -

to prove that he was right when he said attorneys had misbehaved and politics, favoritism, and friendship had in the past been pervasive under the administration of Leonard Damron. He also announced his intention to exercise his right to use his office to defend himself.

If the Commission was angry before, now it was infuriated. Judge Graham was actually going to defend himself and it was clear now that they had opened up a pandora's box that was going

to reveal some gross truths about the Citrus County Judicial System.

They then systematically set about doing everything they could to prevent Judge Graham from defending himself including adding a separate charge against him for asking for public information and using his office to defend himself.

The deeper the Commission got into the case the more they realized Judge Graham was right and the more they realized how big a mistake it was not to have given him a little time to talk to them in a confidential hearing. However, instead of dropping the charges they proceeded to force him to a hearing unprepared, his subpoenas quashed, his evidence suppressed, his witnesses excluded, and under circumstances so severe that he could not possibly continue.

But he didn't cave in. Their rage built. Who is this man to challenge us? He's actually insisting on the rules of evidence. He's asking to proffer argument and proof. He's demanding to view the hundreds of documents the Commission

* * *

EXCERPTS FROM PETITIONER'S REPLY
TO COMMISSION'S REPLY

This Honorable Court should keep in perspective the history of the Commission. It was created because Judge Kelley's political opponents and some fellow judges with an ax to grind could not get him impeached.

During the Senate trial counsel for Kelley articulated the concern we must all have for the independence of the judiciary:

> "Our primary responsibility is to Richard Kelly, but I think, in a larger sense, that we have a responsibility to the entire judiciary of the State of Florida. The proposition that is before you in these proceedings involves every judge, sitting in every court in the State of Florida, and that proposition is simply this:
>
> Must a judge render decisions on the basis of the influence of the lawyer involved? Must a judge curry favor with the Bar that practices before him, or risk impeachment, risk being discharged from his office, risk public disgrace and humiliation, or can he make his decisions independently, as an independent judiciary was intended to make them?
>
> Now, gentlemen, I think, also, in a larger

> sense, every citizen of the State of Florida is a participant in these proceedings because, when the

> independence of the judiciary is diminished, it diminishes all of us. The very foundation of all our liberties and all our rights depends upon an independent judiciary, which is not subject to prejudice by lawyers, litigants, or from any other source."

Therein lies the double irony of this case.

First, Judge Graham is assailed not because he is unethical, dependent, or lacks integrity. He is being assailed because he has two [sic] much integrity to remain silent and ignore the misconduct of others as it affects the immediate due administration of justice in the Citrus County Court.

He won't let a State Attorney who has engaged in politics and favoritism in the disposition of criminal cases for politically prominent individuals, prosecute an admitted felony offense in misdemeanor court without asking why. He will not let defendants or their attorneys falsify the record without comment.

He will not allow the Chief Judge to abuse his administrative authority by removing him from a criminal case for having correctly ruled against the State of Florida and to do so with an Administrative Order which lies about the reason it was executed. He will not let attorneys play the fool in

leather disco jackets. He will not let a high ranking Deputy Sheriff "grab" his friend out of jail.

Furthermore, he is just too fiercely independent to allow the newspapers, the attorneys, his political opponents or the Commission to frighten him away from his duty to speak up against these outrages.

The Second irony is that the very Commission that is supposed to defend the independence and integrity of the judiciary has become an instrument of oppression to crush the very independence and integrity it was created to preserve.

The Commission, inflamed by the newspaper editorials sent to it by Mr. King, did not have the integrity or independence necessary to conduct a fair investigation of Judge Graham.

It jumped to the conclusion that he was guilty and proceeded to the eight day hearing which was a complete joke. Nothing that Judge Graham is falsely accused of singularly or cumulatively comes close to the rude arrogant, indifferent and wrongful treatment meted out by the Commission during the proceedings which were viewed by thousands of Citrus County citizens.

The Commission did not try Judge Graham. It disgraced itself. It proved just how correct the Bench and Bar Committee is in recommending a restructuring of the Commission.

The Commission has indeed become an "instrument of oppression". It has become a lever of special groups or interest which threaten the independence of the judiciary. It has become its practice to concern itself with trifles or mares' nests of unsubstantiated charges.[4/] It has become an institution which no longer provides proceedings which are "essentially fair".

The time has come to destroy it. The Bench and Bar Committee agrees. The facts of this case cry out for its destruction. The Judges of this state are becoming a timorous lot afraid of their judicial shadows, fearful to exercise conscientiously their rights.

I urge this Court to stand up for Judge Graham. I urge it to stand up for the people of Citrus County. I urge it to stand up for the independence and integrity of the judiciary and the fundamental values of our nation.

4/Judge Bryson is currently under prosecution for receiving wake-up calls from a County Commissioner. Judge Perry is being

prosecuted for holding defendants in contempt for driving away from the Courthouse after their licenses have been suspended.

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I urge the Court to do what has never been done in the almost one quarter of a century that the Commission has existed. I ask it to reject the Findings of the Commission.

I also ask it to commend Judge Graham for his dedication and courage in reforming the Citrus County Court and standing up for its integrity over almost overwhelming opposition.

Finally, I urge the Court to rule the Commission and the Code it enforces unconstitutional and to work toward its replacement by a system which at a minimum provides respondent judges with the right to a civil trial before an unbiased jury of fellow citizens.

Respectfully submitted,

/s/
HONORABLE GARY GRAHAM
Post Office Box 519
Inverness, Florida 34451

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by hand delivery to the Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street,

Tallahassee, Florida 32399-1925, and a true copy mailed to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, Post Office Box 3401, Tampa, Florida 33601, This 1st day of June 1993.

/s/_____